Supreme Court, U.S.
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No.

IN THE
Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner,

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
LEROY S. ROOKER,
Director of Family Policy Compliance Office,
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
and
ALBERTO R. GONZALES, Attorney General,
Respondents.

On Petition For Writ Of Certiorari
To The Court of Appeals For The State of Washington, and
To The United States Court Of Appeals
For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

Volume I

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QUESTIONS PRESENTED FOR REVIEW

1. Washington State University dismissed Sakkarapope from the IIDP and its joint master degree program in statistics without affording the student any due process hearing; the IIDP disputed examination was never reviewed by an independent committee with proper academic expertise in the student's academic areas of study; withholds his educational records on the portion of the preliminary examination that the University claimed Sakkarapope received failing grades, but disclosed the examination on the portion he received a passing grade; the Secretary of the U.S. Department of Education, and LeRoy Rooker closed Sakkarapope's FERPA complaint without finding; the trial court dismissed his Petition for Review for lack of jurisdiction; the state Court of Appeals affirmed the trial court's decision; the U.S. District Court and the U.S. Court of Appeals dismissed a civil complaint:

> Whether the State of Washington, the Board of Regents for Washington State University, The Scretary of the U.S. Department of Education, LeRoy Rooker, the Courts of Appeals, and the state trial court have violated and deprived Sakkarapope's due process right and liberty interests which is prohibited under the Fourteenth Amendment and State Cont. Article I Sec. 3 and 4

2. While the judicial reviews of the University's decisions and actions under the state Administrative Procedure Act--RCW 34.05 and of a remedial action under the state civil service law--RCW 41.06 have been pending in the state courts, the University requested the BCIS to initiate a removal proceeding in the Immigration Court; the

Immigration Judge entered a removal order; the Board of Immigration Appeals affirmed the IJ's decision; the U.S. Court of Appeals dismissed and denied Sakkarapope's Petition for Review for lack of jurisdiction:

> Whether the Attorney General; the IJ, the BIA and the U.S. Court of Appeals have deprived Sakkarapope's due process rights and his liberty interests in the remedial action and continued in the academic programs, which is prohibited by the Fourteenth Amendment, and State Cont. Article I Sec. 3 and 4.

3. Whether FERPA §1232g(a)(1); §1232g(f) and (g), creates a federal right to inspect and review of educational records and **"a federal due process right"** guaranteed by the Fourteenth Amendment.

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NOTICE

This Petition is directly related to a Petition For Writ Of Certiorari Case Number 06-412* previously denied by this Court. It arose from the same causes in this Petition, however, it reached this court sooner. The portions of issues and supporting records are incorporated within this Petition as deemed appropriate where the issues are directly related. The Petition For Writ Of Certiorari Case Number 06-412 should be part of the Appendix to this Petition for the court consideration. The supporting documents previously filed in this court are not duplicate in the newly appendix, but directly cited into it.

Due to time and resource limitation, the pleadings of Respondents in the lower courts are not reformatted/retyped in the Appendix. Respondents are requested to provide supplemental appendix as deemed appropriate. Since Respondents have digital versions of its own pleadings, it would be more accurate and efficient.

Citations:

- The "Petition For Writ Of Certiorari Case Number 06-412" is cited as "Pet. 06-412."
- The "Appendix to Petition For Writ Of Certiorari Case Number 06-412" is cited as "App. Pet. 06-412."
- The records in the U.S. Court of Appeals Case No. 05-75413:
    - Excerpts of Records as "U.S. COA Excerpt."
    - Brief for Petitioner and Reply as "Br. Pet" and "Reply Br. Pet."

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* The Petition should have been presented before this court together in this first place.

- Clerk's Paper in the Court of Appeals for the State of Washington is cited as "Clerk's Paper or CP."
- WSU's Certified Records in the Whitman County Superior Court is cited as "CR."

I. JURISDICTIONAL STATEMENTS

1. This Petition for Writ of Certiorari is from a final judgment of the State of Washington Court of Appeals terminating a review of the Whitman County Superior Court's judgment on Motion for Summary Judgment that disposes of all parties' claims:

a. Pursuant to RCW 34.05 (Administrative Procedure Act (APA)) and RCW 42.17.340 (Public Records Disclosure Act (PDA)), a Petition for Review of Washington State University's decisions and actions was filed with the Whitman County Superior Court on July 23, 2003. A final judgment was entered March 5, 2004. (Appendix (App.) 12-29)

b. The Court of Appeals, Division III, terminated review on September 8, 2005, denied reconsiderations on January 5 and February 1, 2005, and issued a Mandate on October 26, 2006, rendering the September 8, 2005 decision became the decision terminating review on October 10, 2006. (App. 1-12)

c. The Supreme Court for the State of Washington denied stay enforcement of the trial court's decision on February 1, 2005, and Petition for Review on **October 10, 2006**. (App. 61-68, 84-87)

2. This Petition for Writ of Certiorari is also from a final judgment of the United States Court of Appeals for the Ninth Circuit dismissing in part and denying in part of a Petition for Review of an Order of the Board of Immigration Appeals:

a. The Immigration Judge ("I.J.") entered its decision in on April 23, 2004, in a removal proceeding. The Board of Immigration Appeals ("BIA") entered a final order of removal on September 12, 2005. (U.S. COA Excerpt Vol. I 1-4, 103-111)

b. The Court of Appeals for the Ninth Circuit rendered its decision in an unpublished Memorandum

filed December 13, 2006, by a panel of Circuit Judges, GOODWIN, LEAVY, and FISHER. (App. 43-44)

3. This Petition for Writ of Certiorari is from a final judgment of the United States Court of Appeals for the Ninth Circuit affirming the District Court on Motion for Summary Judgment that disposes of all parties' claims.

a. The original Complaint was filed in the United States District Court, Eastern District of Washington (Spokane) on February 24, 2004. The District Court has jurisdiction under Civil Rights Act 42 U.S.C. §1983; the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21; and Fed. APA 5 U.S.C. 554 et. seq. The District Court entered a final judgment on June 22, 2004.

b. The Court of Appeals for the Ninth Circuit rendered its final decision in an unpublished Memorandum filed February 22, 2006. A petition for panel rehearing and rehearing en banc was denied on June 8, 2006, and a final judgment was entered June 27, 2006. A Petition for Writ of Certiorari was filed with this court Case No. 06-412, and later denied on November 27, 2006.

4. This Supreme Court has jurisdiction to review a final judgment of the Courts of Appeals. 28 U.S.C §1254; Rule 10.

II. CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS INVOLVED IN THE CASE

1. The Fifth, Eleventh and Fourteenth Amendments.
2. 20 U.S.C §1232g; 34 C.F.R. 99, and WAC 504-21. (App. Pet. 06-412 at 99-122)
3. Federal Administrative Procedure Act (APA), 5 U.S.C. 554; 5 U.S.C. 555. (App. Pet. 06-412 at 72-80)

4. State Administrative Procedure Act (APA), RCW 34.05. (App. Pet. 06-412 at 81-95)
5. Civil Rights Act, 42 U.S.C. §1983.
6. WAC 504-04. (App. Pet. 06-412 at 96-98)
7. Immigration and Nationality Act (INA) 101(a)(15)(F), 237(a)(1)(C)(i), and 8 C.F.R. § 214
8. Washington State Civil Service Law, i.e., RCW 41.06. 41.64, and WAC 251-12-600 (Remedial Action)
9. *Gonzaga v. Doe*, 536 U.S. 273, 287 (2002).
10. *Horowitz v. Board of Curators of the Univ. of Missouri*, 435 U.S. 78 (1978); *Schuler v. University of Minnesota*, 788 F.2d 510, 514 (8th Cir. 1986).

III. STATEMENTS OF THE CASES AND FACTS*

Sakkarapope was NOT a regular student like those who came to schools in the States on their own initiatives. His initial admission to a graduate program at Washington State University (University/WSU) in Business Administration and four years financial assistance were arranged by the University, while he was an Associate Dean at Prince of Songkla University, Thailand. (Clerk's Papers (CP) 101-3) The University failed to meet its commitment at the end of 1994 spring semester and forced Sakkarapope to leave the initial program. Despite of unfortunate difficulties, he had continuously enrolled and loyally stayed at WSU through various programs from an Intensive American English Program to doctoral programs.

While enrolled in the Individual Interdisciplinary Doctoral Program (IIDP), Sakkarapope declared a master degree program in statistics as a joint degree program in 1999†. In spring 2000 semester, Sakkarapope had an

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* *See also*, additional details in App. 358-370; App. Pet. 06-412 at 138-145, 168-172, 177-179, 191-203, 253-269, 272-311, and 322-348.

† The IIDP is a special program option tailor-made for individual student across at least three degree granting academic departments, approved by the Graduate Studies Committee (GSC), based upon a proposed agreement of the contents and procedures of the individual program of

academic dispute with Washington State University preliminary examination (IIDP prelim exam). When realizing that his advisory committee did not fulfill its obligations as prescribed in the program of study individually approved by the Graduate Studies Committee and the agreed content and format of the prelim examination, Sakkarapope had disputed with Kenneth Duft, chair of the advisory/ examination committee, and requested the committee be re-convened to solve the dispute, and his request was denied. *See* App. 129-152, 169-170, 207-30.

Duft prematurely and arbitrarily terminated Sakkarapope's IIDP program of study at the end of the written portion of the IIDP prelim exam. After being informed a procedure governing the IIDP that Sakkarapope cannot be terminated prior to an oral examination portion taken place as the written and oral examinations constitute one preliminary examination, Duft scheduled for a walking-through-oral examination on February 11, 2000 and then formally terminated Sakkarapope from the IIDP on April 26, 2007 based on a false claim that Sakkarapope had failed the examination twice. With an objection to the false claim, Karen DePauw changed the basis of its decision by adopting an unpublished policy to arbitrarily terminate him from the program anyway. (App. 115-6, 231-7)

Sakkarapope has continuously appealed the IIDP dismissal through the procedures described in the Adjudication of Rights and Responsibilities of the Graduate Student Code, providing appeal procedure under the Graduate School and in the Faculty Manual providing a

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study between the student and advisory committee. Dean of Graduate School is the secretary to the GSC, and the department chair of the IIDP. A joint master program degree in statistics is also a special program option that allows a student to pursue two degrees at the same time by sharing the same course work within the scope of the doctoral program, but both programs are administered separately. It cautiously noted that not all general graduate school policies and procedures are applicable to these special program options. *See*, App. 139-52, 169-72; COA Addendum to Brief of Petitioner 66-71.

procedure for individuals to make "a direct appeal" before the Board of Regents through the University president (App. 159-60; WSU Faculty Manual on page 6; CP 271-3; App. 207-331).

The IIDP department did not conduct any academic review as DePauw bypassed her review as department chair to the Graduate School. (App. 107-20) Although the Graduate Student Code stipulates that a strictly academic appeal be handled the Associate Dean, Herbert Hill, a professor in Chemistry, conducted and rendered an academic decision by himself without a proper academic expertise in Sakkarapope's IIDP program of study--three disciplines, Economics, Agricultural Economics, and Finance. In response to Sakkarapope's objection and request for a proper academic review, DePauw appointed a so-called Graduate Student Rights and Responsibilities (CGSRR), chaired by Howard Grimes. The CGSRR comprised of three members, Grimes, a professor in Molecular Biosciences, Jim Harsh, a professor in Chemistry in Crops and Soil Sciences, and Sally Blank, a professor in Kinesiology*. (App. 114, 117-20)

In formal proceedings pursuant to, the APA--RCW 34.05.413 through 34.05.476, WSU has adopted the model rules of procedure adopted by the office of administrative hearings, WAC 10-08 since 12/23/1989. WAC 504-04-110. Not only the CGSRR did not conduct any hearing in compliance with RCW 34.05 and the Adjudication of Rights and Responsibilities of the Graduate Student Code, but also confidentially operated its own secret interview and rendered a slam-dunk decision of September 19, 2000. (App. 114) The academic expertise of the CGSRR members in Molecular Biosciences, Chemistry and in Kinesiology and Hill's in Chemistry is incompatible and has nothing to do with Sakkarapope's academic area of study.

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* These three members of CGSRR were also members of the Gradate Studies Committee which approved Sakkarapope's IIDP program of study in March 1999.

Nonetheless, where the 2000 IIDP prelim examination in dispute was never reviewed by any independent committee with proper academic expertise, DePauw arbitrarily concurred with Hill's, the CGSRR and the Advisory/examination committee on October 10, 2000. (App. 107-114)

Sakkarapope had persistently appealed the decisions through the University administrative channels, the Provost, the President and the Board of Regents. Where the University never conduct any hearing in compliance with the APA--RCW 34.05.413 et. seq., as prescribed in WAC 504-04-110, an application for adjudicative proceeding was filed before the Board of Regents in January 2003, but his appeals were ignored. The University did not either commence an adjudicative proceeding or dispose of such application as prescribed in RCW 34.05.423, 416. (App. 271-331)

Through public record and FERPA requests, Sakkarapope had made a series of requests for his educational records relating to the IIDP examination and the appeals. Grimes, who had custody of Sakkarapope's education records, did not release the records of the CGSRR. To date, **January 8, 2007**, the University released the records of the IIDP examination on the portion that he received a passing grade, but withholds or destroyed the portions of the claimed failing grades.* Not only the University did not properly afford him a due process hearing under FERPA, but also Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda leading to the termination of January 31, 2003 from his joint master degree program. No hearing was afforded.

The IIDP prelim exam dispute led to a series of litigations in both state and federal courts:

(1) A Petition for Review of the University's decisions and actions was filed with the Whitman County Superior Court on July 23, 2003, pursuant to the state

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* *See,* Kenneth Duft's June 7, 2002, email to Kirsten Pauli.

Administrative Procedure Act, RCW 34.05. A final judgment dismissing the Petition was entered March 5, 2004, based on an untimely petition. The Court of Appeals, Division III, terminated review on September 8, 2005, denied reconsiderations on January 5 and February 1, 2005. (App. 1-29) The Supreme Court for the State of Washington also denied stay enforcement of the trial court's decision on February 1, 2005, and Petition for Review on October 10, 2006. (App. 61-68, 84-87)

(2) After unsuccessful attempts to exercise his rights to inspect and review his education records, Sakkarapope requested for a hearing to release his education records on December 5, 2001. Instead of the "Registration and Records Committee" as designated in the Committee Manual, the Student Records Committee ("SRC"), an ad hoc committee, was formed to hear FERPA issues under WAC 504-21-040, (App. Pet 06-412 at 99-109), and prohibited an advisor to directly address the committee or advocate on his behalf. Despite of Sakkarapope's objection to the SRC's authority, the SRC arbitrarily conducted a hearing and rendered its slam-dunk decision of April 5, 2002, stating "the University has fully complied with your request for the release of education records under FERPA." (App. Pet 06-412 at 53-58) A FERPA complaint was filed with the Family Policy Compliance Office ("FPCO") on September 27, 2002, and LeRoy S. Rooker, Director, later refused to enforce the FERPA federal due process. The Petition was denied on January 20, 2004, stating "closing this matter without a finding..." (App. Pet. 06-412 at 59-70, 322-335)

A civil complaint was filed in the United States District Court, Eastern District of Washington (Spokane) on February 24, 2004. Based on the Whitman County Superior Court's judgment of March 5, 2004, the District Court entered a final judgment on June 22, 2004, that disposes of all parties' claims. The Court of Appeals for the Ninth Circuit rendered its final decision in an unpublished Memorandum filed February 22, 2006, and denied a petition for panel

rehearing and rehearing en banc on June 8, 2006. A Petition for Writ of Certiorari was filed with this court Case and later denied on November 27, 2006. (App. 30-42; App. Pet. 06-412 at 123-132)

(3). The University not only terminated Sakkarapope's enrollment, but also his on campus employment on February 24, 2003. Where the University did not make the employment appointments in compliance with the state civil service law, a remedial action was requested pursuant to WAC 251-12-600. The Department of Personnel and the Personnel Appeals Board denied Sakkarapope's request for remedial action on July 8, 2003, and October 5, 2004, respectively. A Petition for Review of the PAB's Order was filed with the Thurston County Superior Court on October 11, 2004. A final judgment was entered December 22, 2006, finding that the PAB's committed error of law, reversing the PAB's Order, and remanding the matter back to the DOP for further proceeding. (App. 89-90).

(4). On January 31, 2003, Grimes premeditatedly terminated Sakkarapope's enrollment from a master program in Statistics retroactively effective January 10, 2003. On 6/9/2003, Ms. Mary Furnari informed Mr. Daniel Hanson, the BCIS, that the University entered Sakkarapope into the SEVIS system and terminated him on the same day, on May 1, 2003, and asked the BCIS to take action. While the BCIS by Diana M. Wolder (9/18/2003) has recognized that a petition for review of the University's decisions and actions has been active in the state courts: "We need your advice on how to responds to the petition attached. The petitioner is no longer attending school. ICE is ready to issue NTA. Should we issue NTA while this issue between the petitioner and school is outstanding?," Mr. Hanson took action according to Ms. Furnari's request. (App. 453-9)

A removal proceeding was initiated and held on April 22, 2004. The Immigration Judge ("I.J.") entered its decision in on April 23, 2004. The Board of Immigration Appeals ("BIA") entered a final order of removal on September 12,

2005. (U.S. COA Excerpt Vol. I 1-4, 103-111) The Court of Appeals for the Ninth Circuit rendered its decision on December 13, 2006. (App. 43-44)

The state and federal courts of appeals have decided important constitutional questions:

(i) The U.S. District Court's and the U.S. Court of Appeals' decisions raised an important federal question sought to be reviewed in this court directly involving with the interpretation of the Supreme Court's precedent in *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002), and whether FERPA §1232g(a)(1); §1232g(f) and (g), creates "**a federal due process right**" guaranteed by the Fourteenth Amendment and then actionable under §1983 as well as a question of exceptional importance. *Gonzaga v. Doe*, 536 U.S. 273, 122 S.Ct. 2268, 153 L. Ed. 2d. (2002); *State of Maine v. Thiboutot*, 448 U.S. 1 (1980). (Pet. 06-412) Although the Petition 06-412 was earlier denied by this court, these important legal questions remain unanswered and are directly related to this Petition.

(ii) The U.S. Court of Appeals has decided an important federal question whether a removal of a student holding an F-1 visa status while the judicial reviews of the University's decisions and actions under RCW 34.05 and RCW 41.06, are active, and whether the IJ denied adjustment of status to that of permanent resident have deprived Sakkarapope's due process rights and his liberty interest of the remedial action, which is prohibited by the Fourteenth Amendment. Alternatively, whether such the IJ's, BIA's and the Court of Appeals' decisions are unconstitutional is an important question of law and has national implication.

(iii) The state Court of Appeals has decided an important constitutional question of due process right in dismissing Sakkarapope's Petition for Review based on an untimely petition in such way that his due process right and liberty interest have been deprived. Whether the dismissals from the IIDP and its joint master degree program in

statistics meets the minimal requirement in the meaning set forth by this Court in *Horowitz v. Board of Curators of the Univ. of Missouri,* 435 U.S. 78 (1978), and as interpreted by the U.S. Court of Appeals in *Schuler v. University of Minnesota*, 788 F.2d 510, 514 (8th Cir. 1986), raises a constitutional question. As such, whether the state has deprived Sakkarapope's due process rights in regard to the academic dismissals and the student's liberty interest to continue in the programs, which is prohibited by the Fourteenth Amendment.

IV.
ARGUMENTS

A. The State and Its Actors Are Prohibited to Deprive Any Person of Life and Liberty without Due Process of Law under the Fourteenth Amendment

The Courts of Appeals' decisions are unconstitutional as it violated the due process and equal protection clauses of the Fourteenth Amendment and the State Constitution Article I Section 3 and 4. The Fourteenth Amendment to the United States Constitution provides that no state shall "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amends. V, XIV, § 1.2 The due process clause of the Fourteenth Amendment confers both procedural and substantive protections. *Albright v. Oliver*, 510 U.S. 266, 114 S. Ct. 807, 127 L. Ed. 2d 114 (1994). When a state seeks to deprive a person of a protected interest, procedural due process requires that an individual receive notice of the deprivation and an opportunity to be heard to guard against erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976). The opportunity to be heard must be "'at a meaningful time and in a meaningful manner,'" appropriate to the case. Id. at 333 (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S. Ct. 1187, 14 L. Ed. 2d 62 (1965)).

The Washington Constitution imposes the "paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex." State Const. Article IX, § 1. A right to education is a fundamental right. The Washington Constitution also provides equal, but not greater, due process protection, *In re Personal Restraint of Dyer,* 143 Wn.2d 384, 394, 20 P.3d 907 (2001). Substantive due process protects against arbitrary and capricious government action even when the decision to take action is pursuant to constitutionally adequate procedures. *Halverson v. Skagit County*, 42 F.3d 1257, 1261 (9th Cir. 1994). State interference with a fundamental right is subject to strict scrutiny. *In re Parentage of C.A.M.A.*, 154 Wn.2d 52, 57, 10, 109 P.3d 405 (2005). Strict scrutiny requires that the infringement is narrowly tailored to serve a compelling state interest. *Washington v. Glucksberg*, 521 U.S. 702, 721, 117 S. Ct. 2258, 138 L. Ed. 2d 772 (1997). The United States Supreme Court has recognized certain liberty interests protected by the due process clause but not explicitly enumerated in the Bill of Rights.

A "property interest" in continued attendance and school officials' obligations to afford a minimal due process were recognized that the student should be accorded an opportunity to appear personally to contest such allegation. *Gaspar c. Bruton*, 513 F.2d 843, 850-51 (10th Cir. 1975); *Goss v. Lopez*, 419 U.S. at 584, 95 S.Ct. at 741 [519 F 2d at 9]; *Board of Regents v. Roth*, 408 U.S. at 573, 92 S. Ct. at 2707. Thus, a "hearing" is required to be held before the final order becomes effective. *Shirley Bowing v. Board of Trustee of Green River Com. College,* 85 Wn.2d 300(1975); *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969).

Washington State University (WSU) is a state institution of higher education created by law to provide higher education within the State. RCW 28B.10.016; State Const. Article XIII , § 1. WSU is prohibited from depriving any person of life, liberty, or property, without due process of

law. The fundamental right, "right to education," is protected by the state constitution. The State subscribes a due process of law in the Administrative Procedure Act (APA), RCW 34.05, in which WSU is not exempted from the Act. An adjudicative proceeding in compliance with the APA, is due process to which WSU shall afford its students. "Academic dismissals are not excluded" from the APA. (Clerks' Paper (CP) at 1215) Administrative and judicial review proceedings under RCW 34.05 are student's due process of law. "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (CP 991). WSU conceded in its own wards that:

> The APA governs all judicial review of agency orders and actions unless the action is expressly excluded by the Act. RCW 34.05.010 and RCW 34.05.030. Academic dismissals are not excluded and the APA is the sole mechanism for Mr. Sakkarapope to file his appeals of his academic dismissals. (CP at 1215)

In formal proceedings pursuant to, the APA--RCW 34.05.413 through 34.05.476, WSU has adopted the model rules of procedure adopted by the office of administrative hearings, chapter 10-08 WAC since 12/23/1989. WAC 504-04-110. Nothing in the APA may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. RCW 34.05.020

Further, WSU's Graduate Student Code adopted an adjudication of rights and responsibilities supplemental to WAC 10-08, WAC 504-04-110 and provides that strictly academic issues are typically handled by the Associate Deans of the Graduate School and the CGSRR will operate with due respect to the rights of all parties to review and rights to a fair hearing. The Provost will consider appeals based on procedural irregularity. In all instances, the University seeks fair and expeditious action on academic and conduct issues.

Resolutions must uphold the highest standards of academic freedom and integrity. (App. 159-60)

The Graduate School policy was intended to relieve professors and departments of the details of administration, permitting maximum freedom in decision-making consistent with established policies and with high standards of graduate education. (App. 162-3) All departments/programs must make an annual review of each graduate student:

> During spring semester, the department/program chair will give written notification to each graduate student of his/her performance. After appropriate faculty have been consulted, the names of those students to be dropped from a program shall be sent to the Dean of the Graduate School. (App. 175-6)

WSU expressly established graduate rights and expectations that graduate students at WSU shall maintain the right: "To be governed by clearly stated and justifiable academic procedures, rules, and regulations," and "To be accurately informed of program requirements and expectations upon enrollment." Graduate students at WSU shall also maintain the expectation that departments and programs "**Establish criteria for termination of students from programs.**" Graduate students at WSU shall also maintain the expectation that advisors and mentors will "Provide explicit and well-publicized dismissal and appeal procedures." (App. 154-8)

Therefore, graduate student's rights and expectations were clearly established. WSU is obligated to maintain them as part of educational contract. Where WSU adopted rules and procedures, i.e., WAC 504-04-110, WAC 10-08, thus, under the state constitution, an academic dismissal is fully protected of a due process under the state law greater than that of the minimal due process requirement under the federal constitution; both dismissals from the IIDP and the master programs are fully protected under the APA, RCW 34.05, which is to provide a student a greater protection of due

process of law than that of the federal constitution to protect the fundamental right, right to education.

B. The IIDP Dismissal Was Arbitrary, Capricious and/or Abused of Discretion, and Violated the Terms of Student-Institution Contract.

Where a grade has been award improperly, the courts must determine whether the University's action reflected the application of academic judgment or arbitrary or unfair application of institutional policy. A student dismissal motivated by bad faith, arbitrariness, capriciousness, or a manifest abuse of discretion may be actionable. *Connelly v. University of Vermont,* 244 F. Supp. 156 (D. Vt. 1965) at 159-60; *Gaspar v. Bruton,* 513 F.2d 843 (10th Cir. 1975) at 850-51; *Board of Curators of the University of Missouri v. Horowitz,* 435 U.S. 78(1978).

By relying on *Horowitz*, the U.S. Supreme Court addressed the subject of the standard of review of academic judgments that judges may not override the substance of a genuinely academic decision unless it is such a substantial departure from accepted academic norms as to demonstrate that the person or committee responsible did not actually exercise professional judgment. *Regents of the University of Michigan v. Ewing*, 474 U.S. 214, 225 (1985). The Court assumed without deciding the issue that the student had a property interest in continued enrollment, and noted that it was not the school's procedures that were under review—the question was whether the record compels the conclusion that the University acted arbitrarily in dropping the student from the program without permitting a reexamination.

As indicated above, the records in this instant case clearly show that the advisory/examination committee prematurely and unfairly terminated Sakkarapope from the IIDP before the examination even completed. It did not have a proper understanding of the procedures governing the IIDP. When it learned that it could not do so, the oral examination was prejudicially held; it was just scheduled to fulfill the

formal procedure. Duft refused to reconvene the committee to solve the dispute in good faith and has withheld or destroyed the records* of the examination on the portion he claimed Sakkarapope received failing grades.

Where the Graduate School normally allows a student to retake the examination and the advisory committee reaffirmed Sakkarapope that he would be allowed two attempts to pass the examination (*see*, Holly Wang's handwritten note of the minutes of the October 19, 2000 committee meeting; CR PR #02-56 at 296-435; CR 245-61), the University by DePauw dropped Sakkarapope from the program with a false claim that he had failed the exams twice and then later simply changed to that he was not recommended a second attempt. (CR 243-4) Thus, the University acted arbitrarily in dropping the student from the program without permitting a reexamination by the standard of *Regents of the University of Michigan v. Ewing*, Id.

Moreover, the IIDP is a tailor-made for individual student. The program of study and related procedures must be individually approved by the Graduate Studies Committee. The content and format of examination must be established based on the agreement between the student and his advisory committee prior to the exam taken place. Such conditions including other related policies published in the Graduate Student Code, the IIDP Faculty/Student Handbook, and the Graduate School Policies and procedures, constitute the terms of student-institution contract. The refusal to abide by Sakkarapope's approved IIDP program of study and the agreed content and format of the examination constitutes a breach of the educational contract. The University is estopped to dismiss Sakkarapope from the program without fulfilling its contractual terms. (App. 111-2, 125-8)

The Supreme Court found that Horowitz had no right to a hearing, but does not say that no due process is required. In applying *Horowitz,* the court noted that:

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* Per Kenneth Duft's email to Kirsten Pauli dated June 7, 2002.

> Dismissal of a student for academic reasons comports with the requirements of procedural due process if the student had prior notice of faculty dissatisfaction with his or her performance and of the possibility of dismissal, and if the decision to dismiss the student was careful and deliberate....The University's noncompliance with its own grievance appeal procedures would not violate Schuler''s right to procedural due process, because the hearing she received at the department level exceeded the process constitutionally required to protect her interest in continued enrollment at that institution [*Schuler v. University of Minnesota*, 788 F.2d 510, 514, 515 (8th Cir. 1986)].

Under the Constitution of the State of Washington, a due process hearing is constitutionally required under the state RCW 34.05, which is the case that the state provides a procedural safeguard in academic dismissal beyond that of the fourteenth amendment. Where the University refused to disclose the records of the exam on the portion it claimed that Sakkarapope received failing grades and that of the appeal process, and did not properly afford him a due process at both department and the Graduate School levels, as well as refused to abide by the terms of the student-institution contract as prescribed in the approved program and the agreed content and format of the examination. Kenneth Duft also showed his prejudice and bad attitude toward the student in his memorandum dated May 8, 2000 that:

> "Given the long and sordid history attached to this gentleman's course of study here at WSU, it occurred to me that you and I might wish to visit about this note from the Graduate School before I construct a reply. Herb Hill has also been attempting to reach me by phone, but I'll withhold my response until we can discuss this matter." (CP 306)

The University never commenced any adjudicative proceeding. All decisions were arbitrarily and capriciously rendered in bad faith. The discretion was manifestly abused. The IIDP Preliminary examination was never properly reviewed by any committee having academic expertise in the student's academic area of study. (CR 64-71, 74-8, 170-86, 245-61). Herbert Hill was NOT authorized and has no academic expertise to make the academic decision. The CGSRR's members do not have academic expertise in the student's academic areas. (CR 193-209; Grad. CR 392-430).

The CGSRR not only did not conduct any hearing pursuant to WAC 504-04, WAC 10-08 and the Adjudication of Rights and Responsibilities of the Graduate Student Code, but also secretly performed investigative function in violation of the APA, RCW 34.05.458. Then the CGSRR arbitrarily rendered its decisions of September 1, 2000. Dean DePauw then rendered its slam-dunk decision of October 10, 2000 concurring with the examination committee, Hill and the CGSRR. Without conducting any hearing on review, Interim Provost Ronald Hopkins arbitrarily rendered its slam-dunk decision of February 1, 2001. The Board of Regents denied access where it provides a procedure for a direct appeal as described in the Faculty Manual page 6:

> "The approach to the Board of Regents is through the President of the University, who is secretary ex officio of the Board. Any University committee or individual shall be accorded the opportunities to present a direct appeal to the Board of Regents through this channel."

An application for adjudication pursuant to the APA was subsequently filed with the Board of Regents. No response was provided and no adjudicative proceeding was commenced. Sakkarapope showed his full intention and appeared before the Board at the meeting dated January 24, 2003, was not allowed to address the matters before the Board. (CR 883-90) A petition to enforce the oath of office

of the Board was also filed with the Governor. Further, WSU's counsel, Steve Vinsonhaler, communicated with the official of the Office of the Governor to prevent an action from the Governor:

> "Do not respond to this fellow. ATG has been interacting with him for nearly 10 years-they've advised him to get an attorney. He's currently in the US in an expired student VISA, and has been reported to INS. He had every opportunity to successfully complete his studies, but did not perform. DON'T ENGAGE HIM, or a pen pal he will be." (CP 97-315 at 151)

A court has subject matter jurisdiction to decide whether the official procedures used in assigning a student a particular grade were arbitrary and capricious. *OCHSNER v. BOARD OF TRUSTEES,* 61 Wn. App. 772, 773, 811 P. 2d 985 (1991) Under the Graduate Student Code, Sakkarapope has rights and expectations while WSU has duty to maintain them, (CP 261-271), to publish rules and procedures, RCW 42.17.250, to notify administrative remedies available, and to fulfill faculty responsibilities. In the presence of clearly shown constitutional flaws in the "administrative process," i.e., *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617(1968), the dismissal from the program violated and deprived Sakkarapope's due process right and liberty interest. The dismissal was not careful and deliberate; it violates Sakkarapope's right to procedural due process under both state and federal standard requirements. WSU breached the educational contract.

C. The Dismissal from the Master Degree Program in Statistics Was Arbitrary, Capricious and/or Abused of Discretion.

Howard Grimes premeditatedly retaliated Sakkarapope by issuing a series of memoranda leading to the termination of January 31, 2003 from the joint master degree

program in violation of his due process right. The dismissal from the M.S. program was NOT on academic grounds, but a dispute of a program completion deadline. *See* CR 669; App. 455-9 for detail. The University already conceded that:

> ...since the University did not expressly notify Mr. Sakkarapope that "his appeal" was misdirected, WSU does not argue this appeal is untimely...agrees that he has exhausted his administrative remedies since the GSPP does not require he have the matter reviewed by a Graduate Studies Committee. Thus, this matter is ripe for review by the Court. (CP at 991)

The determination of whether Sakkarapope did or did not comply with the school regulations—program completion deadline, is a question of fact. Most importantly, in determining this factual question, reference is not made to a standard of achievement in an esoteric academic field. Scholastic standards are not involved, but rather disputed facts concerning whether Sakkarapope did or did not comply with certain school regulations. This issue adapts itself readily to determination by a fair and impartial "due process" hearing. *See, Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973). Nonetheless, the University did not afford Sakkarapope a due process hearing.

The dismissal was made by Grimes in retaliation of that Sakkarapope has persistently sought administrative remedies in his IIDP appeal and the requests for disclosure of his educational records. Where the records show that no hearing was ever afforded prior to the dismissal from the master program in statistics, the University has violated Sakkarapope's right to procedural due process of the fourteenth amendment.

D. Jurisdiction of the Courts to Judicial Review of Administrative Decisions

The APA requires that a petition for review to be filed within 30 days after a final administrative decision and that:

> A person may file a petition for judicial review under this chapter only after exhausting all administrative remedies available within the agency whose action is being challenged, or available within any other agency authorized to exercise administrative review,... RCW 34.05.534

Thus, the 30 day period of filing a petition for review is not to run until the last administrative remedy as exhausted. The state Supreme Court has consistently held that when an adequate administrative remedy is provided by statute, it must be exhausted before the courts will intervene. *State ex rel. Association of Wash. Indus. v. Johnson*, 56 Wn.2d 407, 353 P.2d 881 (1960); *Sunny Brook Farms v. Omdahl*, 42 Wn.2d 788, 259 P.2d 383 (1953).

The Court of Appeals and the trial court not only ignored the doctrine of exhaustion of administrative remedy, but also misrepresented *LEWIS COUNTY v. PERC*, 31 Wn. App. 853, 644 P.2d 1231 (1982). The term, "a final decision," is a decision upon "consummation of the administrative process." A "consummation of the administrative process" is a due process hearing as defined by the APA, WAC 10-08, WAC 504-04-110. The label, "final," affixed to the action is NOT determinative of its finality, i.e., *Isbrandtsen Co. v. U.S.*, 211 F.2d 51, 55 (D.C. Cir. 1954); *Dept. of Eco. v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181. Doubts must be resolved in favor of the citizen. *Valley View v. Redmond*, 107 Wn.2d 621, 733 P.2d 182.

Where Sakkarapope was not afforded any due process hearing as protected by the APA and the WSU's decisions of February 1, 2001 and January 31, 2003, did not come from any "consummation of the administrative process", it cannot be said the letters of February 1, 2001, and January 31, 2003, were final agency decisions. The term, "final," in the February 1, 2001, is not determinative of its finality. Where the agency's rules provide a procedure for rehearing or reconsideration, a direct appeal before the Board of Regents,

and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon. *Dept. of Ecology v. Kirkland,* Id. Nothing in the so-called final decisions of February 1, 2001, and January 31, 2003 notified Sakkarapope that a petition for review must be filed with the superior court within 30 days as of those decisions. It is WSU's obligation to afford Mr. Sakkarapope due process in arriving at the decision. *Horowitz*, 435 U.S. at 79-80. (CP 991). Sakkarapope's application for adjudicative proceeding must be either commenced pursuant to RCW 34.05.413 or dispose of it pursuant to RCW 34.05.416.

Where Sakkarapope did not ask the state court to review any academic matter and the dismissal from the master degree program was based on the dispute of a program completion deadline, the trial court affirmed the University's dismissal from the master program based on academic ground. (App. 20-1, 27-8) Where the fact and circumstance did not support such judgment, the state Court of Appeals intentionally affirmed the trial court's decision based on an untimely petition by adopting the January 31, 2003 dismissal by Grime, Dean of Graduate School, as a final agency decision despite WSU did not argue this appeal was untimely. Since Sakkarapope was not afforded a due process hearing and the January 31, 2003 decision did not come from any adjudicative proceeding, it is obvious that the statute of limitation of the 30 day period was never to run.

In the IIDP dismissal, the Court of Appeals considered the decision of February 1, 2001, made by the Interim Provost was final and did not consider the decision of October 10, 2000, made by Dean of the Graduate School, Karen DePauw, as a final order. (CR 164-92) This is an inconsistent and double-standard application and interpretation of rules and the statute. This is a case of the same school/agency and the same student as well as under the same APA and the constitutions.

A trial court abuses its discretion only if the discretion exercised is manifestly unreasonable, exercised on untenable

grounds, or for untenable reasons. *Barfield v. City of Seattle,* 100 Wn.2d 878, 883, 887 676 P.2d 438 (1984)); *Mayer v. Sto Indus., Inc.,* 156 Wn.2d 677, 684, 132 P.3d 115 (2006) (quoting *Associated Mortgage Investors v. G. P. Kent Constr. Co.,* 15 Wn. App. 223, 229, 548 P.2d 558 (1976)). Thus, the courts clearly abused of discretion.

Therefore, the statute of limitation of the 30 day period is tolled during the period of seeking administrative remedies available. RCW 34.05.534, .542(3). Indeed, the 30 day period was never to run in both cases. The agency's decisions are ripe for review by the ignoring of the Board of Regents. Such decision is fully qualifying it as a "final decision" for judicial review. *Dept. of Eco. v. Kirkland* Id. The courts did not lose jurisdiction to review the decisions under the APA. The Court of Appeals has decided a federal question of due process right in such way that conflicts with the settled law—the so-called the doctrines of exhaustion of administrative remedy and the finality of agency decision. The judgments rendered by the trial court and the Court of Appeals were induced from frauds----**constructive fraud, fraud in fact** and **fraud in the inducement**. The Court of Appeals and the trial court's decisions have deprived Sakkarapope's due process and equal protection of the laws and abridged his right of petition, State Cont. Article I Sec. 3 and 4 as well as the Fourteenth Amendment.

E. Frauds and Misrepresentation in a Judgment through an Unauthorized Judicial Proceeding.

"The APA does not expressly authorize summary judgments, but case law has established that agencies may employ summary proceedings." *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* 102 Wn. App.1, 14, 979 P.2d 929 (1999). WSU does not have a statute to allow a summary judgment. Such judgment entered is void ab initio and is, in legal effect, no judgment at all. *Rust v. WWSC*, 11 Wn. App. 410, 419, 523 P.2d 204 (1974). The state trial court abused of discretion. *State Ex Rel. Carroll v. Junker*, 79 Wn.2d 12, 26,

482 P.2d 775 (1971). The trial court decision granting a summary judgment through an unauthorized proceeding violates Sakkarapope's due process right; it is abuse of discretion and substantially causes a complete miscarriage of justice. *United States v. Finley*, 301 F.3d 1000, 1007 (9th Cir. 2002). Therefore, the order is unconstitutional. The trial court's judgment was rendered by frauds and misrepresentation in judicial proceedings. The trial court is not authorized to impose additional proceeding, a summary judgment, to diminish Sakkarapope's right of petition and prevent him from obtaining judicial review under RCW 34.05, i.e., RCW 34.05.020, .510, .570 and .590:

Counsel Gordon not only concealed the existing case law in the trial court proceeding, but also intentionally misrepresented the case authority of *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* Id., when filing the Brief of Respondent before this court, by citing a portion of the authority to mislead the Court of Appeals. (*See* Brief of Respondent ("BOR," at 16-8). Counsel Gordon committed fraud in fact of law; it is also constituted extrinsic/collateral fraud preventing Sakkarapope from a full, fair opportunity in obtaining judicial review under the APA.

A judicial review of administrative decisions is directly, based on the record before the administrative agency. *Macey v. Department of Employment Sec.,* 110 Wn.2d 308, 311, 752 P.2d 372 (1988); RCW 34.05.510, .570, .510 and .590. The trial court is required to conduct a review in light of the whole records, RCW 34.05.570(3). In the presence of the genuine issues of facts, a summary judgment is not appropriate. CR 52 and 56; *Ruff v. King County*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). The trial court not only found "some genuine issues," "there is extreme merit" and "I see a lot of merit to those issues," (*See* RP 68-77), but also failed to solve the disputes of facts. RCW 34.05.558 and intentionally quashed the two subpoenas and entered a protective order preventing discoveries prevented Sakkarapope's freedom to act and the whole records

presented for review in violation of his due process right, RCW 34.05.558 and RAP 9.13. Summary judgment is granted only if reasonable persons could reach but one conclusion from all the evidence. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing Atherton Condo. *Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)). WSU is not entitled to a summary judgment.

The state Supreme Court set a precedent that any statute placing roadblocks in the way of a person's claim against the state having been abandoned violates the Equal Protection Clause or Const. art. 1, 12. *HUNTER v. NORTH MASON HIGH SCH. & SCH. DIST.* 403, 85 Wn.2d 810, 539 P.2d 845 (1975) at 818-19. In dismissing Sakkarapope's Petition for Review, based on the lack of jurisdiction of the 30 day period of filing a petition, the Court of Appeals has decided an important federal question in such way that Sakkarapope's right of petition for judicial reviews, RCW34.05.020, has been diminished or having been abandoned. Such deprivation of rights and liberty interests by the state and/or its actors are prohibited under the Fourteenth Amendment.

F. Frauds and Misrepresentation Result in a Judgment Dismissing the PDA Claim on Procedural Ground

The judgment dismissing the PDA's Claim based on the procedural ground that Sakkarapope did not bring the matter in a motion to show cause was rendered by frauds. A fraud is intentional deception resulting in injury to another. A **constructive fraud** comprises all acts, omissions, and concealment involving legal duty, trust or confidence and resulting in damage to another. A **fraud in fact** is one making a false representation with an evil intent when it causes injury to another. A **fraud in the inducement** is

"fraud which is intended to and which does cause one to render a judgment".*

The Supreme Court is constrained by its own precedents. *SKAGIT SURVEYORS v. FRIENDS*, 135 Wn.2d 542, 543 (1998). The Court of Appeals and the trial court are bounded by the Supreme Court's precedents in *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 94-95, 117 P.3d 1117 (2005) that:

> ...A Show Cause Order Is Optional, Not Mandatory, and Intervention Is Allowed.....We will not erect technical barriers to deny review on the merits when to do so is contrary to the purpose of the PDA....a piecemeal litigation is barred by the doctrine of res judicata, or claim preclusion.....

The Court of Appeals and the trial court must bound and be faithful to the purposes of the APA, PDA and *Spokane Research & Defense Fund v. City of Spokane, Id.* The citing its own opinion reversed by the Supreme Court's ruling was misleading and erroneous and then later adopted the language proposed by the bad-faith state lawyer inconsistent with the purpose and legislative intent of the APA, PDA--RCW 42.17.251 and .255, and the *Spokane Research & Defense Fund v. City of Spokane*, Id. (App. 1-3, 12-14) When a statute is silent on a particular issue, the civil rules govern the procedure. *King County Water Dist. v. City of Renton,* 88 Wn. App. 214, 227, 944 P.2d 1067 (1997). Thus, normal civil procedures are an appropriate method to prosecute a claim under the liberally construed PDA. *Spokane Research & Defense Fund v. City of Spokane*, Id.

A judicial review under RCW 42.17.340 shall be allowed to proceed within the APA to deal with the agency record as authorized under RCW 34.05.590(2) and RCW 34.05.558 to secure the just. Where an order to show cause is **optional**, it is optional, not a procedural, technical barrier for

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* Steven H. Gifis, *Law Dictionary*, 5th Edition, Barron's, 2003.

preventing Sakkarapope's right to judicial review under the PDA incorporated with the APA. The Court of Appeals has decided an important question of state law in such way that conflicts with the purpose and legislative intent of the PDA and APA and violates the equal protection clause under the U.S. Constitution.

G. FERPA Creates a Federal Right to Inspect and Review" Educational Records And A "Federal Due Process Right"

For a statute to create such private rights, its text must be "phased in terms of the persons benefited." *Cannon v. Univ. of Chicago*, 441 U.S. 677, 692, n. 13 (1979). FERPA does create not only rights for both students and their parents, "the right to inspect and review their education records," under 20 U.S.C. §1232g(a), 34 C.F.R. §§99.10-99.12, but also a "federal due process" for enforcing and protecting those rights. *See also*, WAC 504-21-030. The Secretary of the U.S. Department of Education (Secretary) and Mr. Rooker, Director of the Family Policy Compliance Office (FPCO) have administrative duty, not discretionary function, to enforce FERPA and afford a due process to students. 20 U.S.C. §1232g(f) and(g), §1231c, and §1221e-3; 34 C.F.R §§99.60-99.67.

The University intentionally withholds Sakkarapope's educational records subject to disclosure and deprived his federal right to inspect and review of the records, due process rights under both FERPA and PDA. The University also moved in the state trial court to quash his subpoenas of the records and sealed the records of the examinations in disputes by claiming FERPA prohibition for disclosure of the records despite the FPCO's interpretation that FERPA does permit the nonconsensual disclosure of education records in certain limited circumstances, such as when the disclosure is made in compliance with a lawfully issued subpoena or court order. CFR § 99.31(a)(9) The University is not the student or a parent of the student; it has no right to withhold

Sakkarapope's educational records. *See* App. Pet 06-412 at 26-70, 272-348. The failure to perform the administrative duty to enforce FERPA by Mr. Rooker, Director of the Family Policy Compliance Office (FPCO) has deprived Sakkarapope's due process right and right to inspect and review of his educational records. The state Court of Appeals' judgments dismissing the PDA and FERPA were induced from frauds and misrepresentation of facts and laws, as well as counsel misconducts. The state and U.S. Courts of Appeals have decided an important question of federal law.

Therefore, the question sought to be reviewed in this court whether FERPA does create a federal right to inspect and review education records under §1232g(a) and "federal due process" for enforcing and protecting those rights and whether the State, the University, the Secretary and Rooker have deprived Sakkarapope's FERPA rights are important federal questions that should be settled in this court and will have national applications to secure national uniformity of the decisions.

H. The Removal Orders by the Immigration Judge and the Board of Immigration Appeals Are Unconstitutional*

The University promises that Sakkarapope be allowed to complete his master degree but not be allowed to continue in the doctoral program pending the outcome of the appeal process, and it will assure Sakkarapope have appropriate immigration status during the appeal process. (App. 118, 122). After Howard Grimes was promoted to dean of the Graduate School, he began his retaliation campaign leading to the dismissal of January 31, 2003 and premeditatedly utilized a federal mechanism to prevent Sakkarapope's return to and remove Sakkarapope from the United States for its own personal interest. While recognizing the judicial review of the University's decisions and action has been active, the

* *See also*, App. 459-83.

BCIS initiated a removal proceeding at the request of Furnari and using the state trial court's decision of March 5, 2004 as evidence. Grimes and other officials committed official misconduct. RCW 9A.80.010. *See*, App. 454-9, 463-7. The government is barred from removing the alien by equitably estoppel as a result of the government's affirmative misconduct, *INS v. Maranda* (Sup.Ct. 1982); McLeod v. Peterson (3d Cir.1960); *Oscar Scoop-Gonzales v. INS* (9th Cir. 2000), and is barred from removing Sakkarapope by a promissory estoppel as a result of the University's promise.

The Service, Immigration Judge and the BIA do not have jurisdiction to determine Sakkarapope's student status at WSU, but the resolution of his student status is from the finality of the disputes between WSU and Sakkarapope which is under the jurisdiction of the state statute, RCW 34.05. The IJ erroneously interpreted the provision of 8 CFR 214(f), state laws and relevant regulations. One member of the BIA is not authorized to interpret the laws. The BIA violated its streamlining policy because the instant case does not fall within 8 C.F.R §3.1(d)(1) or 8 C.F.R §3.1 (a)(1).

The Record of Deportable/ Inadmissible Alien was premeditatedly initiated by the government with false, inaccurate and illegal information about the alien legal status generated by Grimes and other officials.

While a judicial review of the remedial action was pending in the state trial court, the IJ ignored such outcome of the judicial review potentially providing that Sakkarapope meets the conditions for adjustment to a permanent resident through employment. Nonetheless, the Attorney General continued misled the Court of Appeal by stating that Sakkarapope "lacks...or an employer undermines any potential application that he may someday submit." (Brief for Respondent at 11). Now, the Thurston County Superior Court entered a final judgment reversing the decision of the Personnel Appeals Boards. *See,* App. 89-90. This is an obviously potential employment that Sakkarapope may someday submit application for adjustment of status to that of

permanent resident. A remedial action is a liberty interest created by the state law. Thus, the removal order has deprived Sakkarapope's liberty interest. It is prohibited by the fourteenth Amendment.

All the key issues above are not involved with the prosecutorial discretion, but the interpretation of the statutes and laws, and the constitutionality. The Attorney General is also prohibited to deprive any person's life, liberty or property without due process of law under the fourteenth Amendment. The court retains petition-for-review jurisdiction to review constitutional claims, "even when those claims address a discretionary decision." *Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003); *Tovar-Landin v. Ashcroft*, 361 F.3d 1164, 1166 (9th Cir. 2004) (retaining jurisdiction over due process and equal protection challenges to voluntary departure regime); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 (9th Cir. 2003) (retaining jurisdiction on petition for review of denial of cancellation to review due process challenge to streamlining procedure); *Reyes-Melendez v. INS,* 342 F.3d 1001, 1006 (9th Cir. 2003) (retaining jurisdiction insuspension case to review due process challenge based on IJ bias); *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105 (9th Cir. 2003) (retaining jurisdiction over due process claim); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000) (retaining jurisdiction and rejecting due process claim that the BIA failed to review all relevant evidence submitted in suspension case). The Court of Appeals has decided an important question of federal law in regard to the removability of Sakkarapope under the INA; 8. C.F.R. 214(f), and the constitutionality of the decision and action by the Attorney General. *See,* App. 43-44. Such dismissal of the Petition for Review for lack of jurisdiction has so departed from the accepted and usual course of judicial proceedings even within its own circuit. Such departure by the U.S. Court of Appeals is to call for an exercise of this Court supervisory power. A writ by this Court will have national implication in regard to the

removability of an international student while he is in judicial proceedings within state and/or federal jurisdiction, and the constitutionality of the decision and/or action by the Attorney General under this instant case.

V. CONCLUSION

Petitioner respectively asks this court to grant a writ and reverse the state and federal Courts of Appeals' decisions and/or remand for further proceedings. It is further asked this Court invalidate the University's dismissals and provide assurance that the disputed examination be properly reviewed. Such invalidation does not constitute a passing or failing any examination.

A consideration by this court will settle all important issues sought to be reviewed and secure a uniformity of national application. It is further requested that this court grant relieves as indicated in the original Complaint/Petitions and the briefs filed in the Courts of Appeals including reasonable costs and expenses.

RESPECTFULLY SUBMITTED this 8th day of January, 2007.

B. Sakkarapope

Benjapon Sakkarapope
Appearing Pro Se Petitioner

No.

IN THE

Supreme Court of the United States

BENJAPON SAKKARAPOPE,
Petitioner,

V.

THE BOARD OF REGENTS OF
WASHINGTON STATE UNIVERSITY,
LEROY S. ROOKER,
Director of Family Policy Compliance Office,
THE SECRETARY OF
THE UNITED STATES DEPARTMENT OF EDUCATION,
and
ALBERTO R. GONZALES, Attorney General,
Respondents.

On Petition For Writ Of Certiorari
To The Court of Appeals For The State of Washington, and
To The United States Court Of Appeals
For The Ninth Circuit

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

Benjapon Sakkarapope
714 South Jefferson Street,
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Phone: (208) 882-2138

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JAN 5 2006
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, STATE OF WASHINGTON,
DIVISION III

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 22708-1-III cons/w No. 22881-7-III and No. 22732-4-III ORDER GRANTING MOTION FOR IN PART; ORDER DENYING MOTION TO STRIKE OPINION; ORDER DENYING MOTION TO PUBLISH; AND ORDER AMENDING OPINION

THE COURT having considered respondent's motion for reconsideration of this court's opinion dated September 8, 2005; appellant's motion for reconsideration/to strike the opinion, appellant's objection, reply and motion to strike re: respondent's answer to motion to publish; appellant's motion to publish; and respondent's answer to motion to publish, NOW, THEREFORE,

IT IS HEREBY ORDERED as follows:

1. The respondent's and the appellant's motions for reconsideration are hereby granted in part based on *Spokane Research & Defense Fund v. City of Spokane,* 121 Wn. App. 584, 590, 89 P.3d 319 (2004), reversed on other grounds, WL 1903555 (2005).

2. The court's opinion filed on September 8, 2005, is amended by deletion on page 10, of the following first,

second and third paragraphs under **B. Public Disclosure Claims:**

B. Public Disclosure Claims

The issue is whether the court erred in granting summary judgment dismissal of Mr. Sakkarapope's PDA claim. The summary judgment standard of review applies.

Under RCW 42.17.340, a PDA action is brought by 'motion of any person having been denied an opportunity to inspect or copy a public record by an agency, . . . to show cause why it has refused to allow inspection or copying of a specific record or class of records.' RCW 42.17.340(1). Thus, '{w}here . . . a citizen makes a PDA request and the agency refuses to provide the records, the requester may obtain de novo judicial review of the agency's action by proceeding under RCW 42.17.340.' *Spokane Research & Def. Fund v. City of Spokane,* 121 Wn. App. 584, 590, 89 P.3d 319 (2004), reversed on other grounds, WL 1903555 (2005). 'The statutory procedure serves the purpose of the PDA, . . . to ensure speedy disclosure of public records. The statute sets forth a simple procedure to achieve this.' Id. at 591. This court has previously required litigants seeking relief under the PDA to follow the statutory procedures under RCW 42.17.340. See id.

Here, Mr. Sakkarapope attempted to bring his PDA claims before the court by appending his public disclosure requests to his APA petition for judicial review. He did not follow the required PDA procedure. Although Mr. Sakkarapope argues he brought a motion to show cause on January 16, 2004, the court appropriately declined to consider this tardy motion because Mr. Sakkarapope failed to note it for hearing. Thus, the court did not err in dismissing Mr. Sakkarapope's PDA claims as a matter of law. Moreover, the court dismissed the PDA claims without prejudice, so Mr. Sakkarapope would presumably be able to pursue these claims by following the statutory procedures outlined in RCW 42.17.340.

The above paragraphs will be replaced by the following:

The issue is whether the court erred in granting summary judgment dismissal of Mr. Sakkarapope's PDA claim. The summary judgment standard of review applies.

Under RCW 42.17.340, a PDA action may be brought by 'motion of any person having been denied an opportunity to inspect or copy a public record by an agency, . . . to show cause why it has refused to allow inspection or copying of a specific record or class of records.' RCW 42.17.340(1). However, this procedure is not mandatory. *Spokane Research & Def. Fund v. City of Spokane*, 155 Wn.2d 89, 94-95, 117 P.3d 1117 (2005). Rather, the Civil Rules dictate procedure in a PDA case. Id.

Here, Mr. Sakkarapope attempted to bring his PDA claims before the court by appending his public disclosure requests to his APA petition for judicial review. This is insufficient to claim relief under the Civil Rules. See CR 8(a). Although Mr. Sakkarapope may have been able to cure his defective pleading in his later filed motion to show cause, the court appropriately declined to consider this tardy motion because Mr. Sakkarapope failed to note it for hearing. Thus, the court did not err in dismissing Mr. Sakkarapope's PDA claims as a matter of law. Moreover, the court dismissed the PDA claims without prejudice, so Mr. Sakkarapope would presumably still be able to pursue these claims.

3. Appellant's motion to strike opinion and objection to the respondent's reply are hereby denied.

4. Appellant's motion to publish is hereby denied.

DATED: January 5, 2006.
FOR THE COURT:
s/ John A. Schultheis
JOHN A. SCHULTHEIS
ACTING CHIEF JUDGE

FILED
Feb 2, 2006
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, STATE OF WASHINGTON,
DIVISION III

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 22708-1-III cons/w No. 22881-7-III and No. 22732-4-III ORDER DENYING (SECOND) MOTION FOR RECONSIDERATION; ORDER DENYING MOTION TO PUBLISH; AND DENYING MOTION TO CONSOLIDATE

THE COURT having considered appellant's second motion for reconsideration of this court's opinion dated September 8, 2005, and order dated January 5, 2006, appellant's motion to publish and appellants motion to consolidate, NOW, THEREFORE,

IT IS HERE BY ORDERED:

1. Appellant's second motion for reconsideration of this court's opinion dated September 8, 2005, and order dated January 5, 2006, is hereby denied.

2. Appellant's motion to publish is hereby denied.

3. Appellant's motion to consolidate is hereby denied.

DATED: February 2, 2006.
FOR THE COURT:

s/ John A. Schultheis
JOHN A. SCHULTHEIS
ACTING CHIEF JUDGE

FILED
SEPT 8 2005
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, THE STATE OF WASHINGTON,
DIVISION III

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 22708-1-III cons/w No. 22881-7-III and No. 22732-4-III Division Three Panel Five UNPUBLISHED OPINION

BROWN, J.--These consolidated appeals mainly stem from Benjapon Sakkarapope's dismissal from Washington State University (WSU) graduate programs. The trial court summarily dismissed his petition for review because it concluded it lacked jurisdiction due to Mr. Sakkarapope's failure to file within the 30-day limit set by the Administrative Procedure Act (APA) chapter 34.05 RCW. Because the trial court did not err, and we reject Mr. Sakkarapope's other claims, we affirm.

FACTS

In 1999, WSU approved Benjapon Sakkarapope's petition to pursue entry into its Individual Interdisciplinary Doctoral Program (IIDP). In February 2000, he failed the required IIDP preliminary examination by unanimous vote of the graduate studies committee. This resulted in his dismissal from the program. Mr. Sakkarapope unsuccessfully challenged that academic decision up to the graduate school dean, Dr. Karen DePauw. In an October 2000 final academic decision, Dr. DePauw concurred with the February decision and the review process

recommendations, but permitted Mr. Sakkarapope to continue his studies for a Master of Science in Statistics. Dr. DePauw told Mr. Sakkarapope he could appeal any 'procedural irregularity' to Interim Provost Dr. Ron Hopkins. Certified Agency Record (CAR) at 184.

On February 1, 2001, Interim Provost Hopkins denied Mr. Sakkarapope's appeal and informed him this was WSU's 'final decision.' CAR at 273. Instead of then pursuing his court remedy under the APA, Mr. Sakkarapope began writing protest letters to various other WSU officials.

Meanwhile, Mr. Sakkarapope continued to pursue a Master's degree. WSU made numerous exceptions to policy and completion deadline extensions before Graduate School Interim Dean Howard Grimes informed Mr. Sakkarapope the deadline was lastly extended until January 27, 2003, by which time he was required to complete and defend his final project and apply for graduation. Mr. Sakkarapope expressly refused to complete his degree by this date. On January 31, 2003, WSU terminated his enrollment by letter and apparently barred further registration in the spring.

Mr. Sakkarapope made repeated requests for copies of his educational records under the Family Education Rights and Privacy Act of 1974 (FERPA)1. He received a brief adjudicative hearing by the student records committee to resolve the FERPA dispute. On April 5, 2002, the committee issued an initial order, appending records that had not been previously produced, and indicating that Mr. Sakkarapope had then been provided his entire educational file. On November 6, 2002, Provost Robert Bates upheld the committee's findings, stating the decision was 'final,' and informing Mr. Sakkarapope he had 30 days to appeal the decision to the Whitman County Superior Court. CAR at 620-21.

Instead appealing to the superior court, Mr. Sakkarapope tried to pursue his various grievances before the WSU Board of Regents. On January 14, 2003, Provost Bates responded for the University President and the Board

President, denying his appearance request and reminding Mr. Sakkarapope he 'had no further appeal rights at Washington State University.' CAR at 331.

During this same time, Mr. Sakkarapope made numerous public records requests through the WSU public records office. He was dissatisfied with the responses.

Finally, on July 23, 2003, Mr. Sakkarapope, pro se, filed his APA petition for review in Whitman County Superior Court. He disputed his dismissals from the IIDP and Master's programs and the FERPA decisions. Further, he sought Public Disclosure Act (PDA) relief by appending a list of his public records requests to his petition. Mr. Sakkarapope then initiated extensive discovery, ultimately resulting in a protective order quashing certain subpoenas and limiting discovery, except as approved by the court. Mr. Sakkarapope moved for interlocutory discretionary review of the trial court's protective order in this court.

WSU moved for summary judgment. On the hearing day, the trial court denied Mr. Sakkarapope's newly filed motions for change of venue and affidavit of prejudice because of the prior discretionary discovery rulings. Mr. Sakkarapope sought separate interlocutory discretionary review of the venue and disqualification issues while the trial court took the summary judgment under advisement.

On February 17, 2004, the trial court issued a memorandum opinion dismissing Mr. Sakkarapope's APA claims for lack of jurisdiction because he failed to perfect review within the 30-day time limit of RCW 34.05.542. Mr. Sakkarapope's summary judgment appeal has been consolidated with his prior petitions for discretionary review. Preliminarily, we consider various motions.

MOTIONS

A. Discretionary Review of Discovery Orders

Mr. Sakkarapope first sought discretionary review of the trial court's discovery rulings quashing his subpoenas and limiting discovery. We review discovery rulings for an abuse of discretion. *Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d

772, 778, 819 P.2d 370 (1991). An abuse of discretion occurs when a decision is manifestly unreasonable or based on untenable grounds or reasons. *State v. Powell*, 126 Wn.2d 244, 258, 893 P.2d 615 (1995).

The court did not abuse its discretion in determining Mr. Sakkarapope's subpoenas were unnecessary in light of the limited nature of an APA decision review. See RCW 34.05.570. A court may limit discovery for good cause 'to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense.' CR 26(c). The court found Mr. Sakkarapope had abused the discovery process by propounding lengthy requests for unnecessary, irrelevant and privileged information, reasonable grounds for limiting discovery. The discovery order enabled the trial court to 'implement the goal of full disclosure of relevant information and at the same time afford the participants protection against harmful side effects.' *See Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 232, 654 P.2d 673 (1982). Discretionary review is denied.

B. Discretionary Review of Venue Request and Affidavit of Prejudice

Mr. Sakkarapope's next motion for discretionary review asked this court to overturn the trial court's denial of his venue change request and refusal to give effect to his affidavit of prejudice. In Mr. Sakkarapope's view, the venue change was connected to the affidavit of prejudice and necessary because the judge had entered the adverse discovery orders.

We review a venue decision and denial of an affidavit of prejudice for an abuse of discretion. *State v. Boot*, 89 Wn. App. 780, 786, 950 P.2d 964 (1998); *In re Marriage of Farr*, 87 Wn. App. 177, 188, 940 P.2d 679 (1997). An affidavit of prejudice must be timely. RCW 4.12.050; *State v. Waters*, 93 Wn. App. 969, 974, 971 P.2d 538 (1999). To be timely, the affidavit must be filed and called to the attention of the judge before that judge has made any rulings involving discretion. RCW 4.12.050. Here, the ex parte venue request was

procedurally unacceptable and lacked a legal basis. The affidavit of prejudice was untimely because the trial court had previously exercised its discretion in the discovery rulings. Therefore, we deny discretionary review.

C. Motion to Strike Appellant's Amended Brief

On October 21, 2005, WSU filed a motion to strike Mr. Sakkarapope's 'amended' brief that apparently attempts to supplement his appellate brief. Mr. Sakkarapope responded by filing an 'Answer, Objection and Motion to Strike Respondent's Motion and Counsel's Misconduct Re: Motion to Strike Amended Brief,' 'Objection and Amendment re: Answer, Objection and Motion to Strike Respondent's Motion and Counsel's Misconduct,' and 'Motion to Determine Mootness re: Respondent's Motion to Strike Amended Brief.' Mr. Sakkarapope basically argues no rule disallows this type of pleading, so his brief should be allowed.

RAP 10.1(b) allows Mr. Sakkarapope to file an appellate brief and a reply brief. See RAP 10.1(b). The rules do not provide for a supplemental brief as filed by Mr. Sakkarapope. *See id.* Mr. Sakkarapope's argument is not well reasoned. Considering the validity of WSU's argument, we grant WSU's Motion to Strike Amended Brief and deny Mr. Sakkarapope's related motions.

D. Motions to Recall and Transfer Case

In May 2005, Mr. Sakkarapope moved to recall and transfer this case to Division One based upon his dissatisfaction with the administrative orders of our commissioner, clerk, and Chief Judge. Our review of the record shows he received all process due under the appellate rules. He is not entitled to a transfer to another court simply because he is dissatisfied with administrative rulings. The Supreme Court has denied interlocutory discretionary review of his concerns. The motions are denied.

E. Additional Motions

Mr. Sakkarapope has filed additional motions which have been referred to this Panel for resolution. On June 22, 2005, Mr. Sakkarapope filed a motion objecting to the

consolidation of proceedings and to transfer the case to Division One. On July 25, 2005, Mr. Sakkarapope filed a motion 'renewing' his objections to the trial court's rulings, essentially consisting of additional briefing on the substantive issues in this case. These motions are untimely under the briefing schedule in this case, disallowed under the appellate rules, and are otherwise without merit. These motions are denied.

ANALYSIS

A. Summary Judgment for Lack of APA Jurisdiction

The issue is whether the court erred in concluding it lacked jurisdiction to review Mr. Sakkarapope's APA claims and summarily dismissing them at WSU's request.

Under the APA, we sit in the same position as the trial court. *Postema v. Pollution Control Hearings Bd.*, 142 Wn.2d 68, 76-77, 11 P.3d 726 (2000). An APA appeal is determined on the agency record and should be affirmed unless it is unconstitutional, outside the authority of the agency, arbitrary and capricious, or taken by agency officials not lawfully entitled to take such action. RCW 34.05.570(4)(c). The party asserting the invalidity of an agency action has the burden of demonstrating invalidity. RCW 34.05.570(1)(a).

Summary judgment is appropriate when 'the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.' *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998); CR 56(c). 'An appellate court engages in the same inquiry as the trial court when reviewing an order for summary judgment.' Id. We view the facts and reasonable inferences from the facts in the light most favorable to the nonmoving party. *See Mountain Park Homeowners Ass'n v. Tydings*, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994). Questions of law are reviewed de novo. Id.

A petition to review a final APA order must be filed with the court within 30 days after service. RCW

34.05.542(2). 'A petition for judicial review of agency action other than the adoption of a rule or the entry of an order is not timely unless filed with the court . . . within thirty days after the agency action.' RCW 34.05.542(3). After 30 days, the court lacks jurisdiction to hear an APA appeal. *City of Seattle v. Pub. Relations Comm'n,* 116 Wn.2d 923, 927, 809 P.2d 1377 (1991). 'An administrative decision is 'final' for purposes of judicial review {under the APA} when it denies a right, imposes an obligation, or fixes a legal relationship between the parties.' *Lewis County. v. Public Employ. Relations Comm'n,* 31 Wn. App. 853, 862, 644 P.2d 1231 (1982).

Mr. Sakkarapope was dismissed from the IIDP doctoral program after failing a required entrance examination. On February 1, 2002, WSU sent Mr. Sakkarapope a letter affirming his dismissal, stating it 'represent{ed} the University's final decision in this matter.' CAR at 273. Thus, WSU's action was final for purposes of the APA on February 1, 2002. *See Lewis County,* 31 Wn. App. at 862-63. Mr. Sakkarapope failed to petition for judicial review until July 23, 2003. Therefore, the court lacked jurisdiction to hear this claim.

Regarding WSU's administrative responses to his FERPA requests for his educational file, WSU reviewed the matter and issued a 'final decision in the matter' on November 6, 2002. CAR at 621. WSU expressly informed Mr. Sakkarapope that he had no further appeal rights within WSU, and he had 30 days to appeal the decision to Whitman County Superior Court. Although Mr. Sakkarapope unsuccessfully attempted to secure further rulings from the Provost, the WSU Board of Regents, and even the Governor, his argument lacks support. Moreover, the board clearly declined his invitation for review by January 15, 2003 and Mr. Sakkarapope did not seek judicial review until July 23, 2003, well beyond the 30-day limit allowed. Therefore, the court lacked jurisdiction to hear that claim under the APA.

On January 31, 2003, WSU terminated Mr. Sakkarapope's enrollment in his master's degree program by letter informing him he was 'dropped' from the graduate program, and his spring enrollment had been 'terminated.' CAR at 350. Again, Mr. Sakkarapope inaptly argues the decision was not final because he refused to accept the finality of that decision and continued to seek relief within the university. A decision is final when it 'denies a right, imposes an obligation, or fixes a legal relationship between the parties.' *Lewis County.*, 31 Wn. App. at 862. WSU's actions were final when it denied Mr. Sakkarapope the opportunity to continue his graduate degree on January 31, 2003. *See Lewis County*, 31 Wn. App. at 862. Therefore, when Mr. Sakkarapope filed for judicial review July 23, 2003, the court lacked jurisdiction. The trial court did not err. Because our decision is dispositive of the summary judgment issues, we decline to address WSU's alternative arguments or Mr. Sakkarapope's remaining theories.

B. Public Disclosure Claims

The issue is whether the court erred in granting summary judgment dismissal of Mr. Sakkarapope's PDA claim. The summary judgment standard of review applies. Under RCW 42.17.340, a PDA action may be brought by 'motion of any person having been denied an opportunity to inspect or copy a public record by an agency, . . . to show cause why it has refused to allow inspection or copying of a specific record or class of records.' RCW 42.17.340(1). However, this procedure is not mandatory. *Spokane Research & Def. Fund v. City of Spokane,* 155 Wn.2d 89, 94-95, 117 P.3d 1117 (2005). Rather, the Civil Rules dictate procedure in a PDA case. Id.

Here, Mr. Sakkarapope attempted to bring his PDA claims before the court by appending his public disclosure requests to his APA petition for judicial review. This is insufficient to claim relief under the Civil Rules. See CR 8(a). Although Mr. Sakkarapope may have been able to cure his defective pleading in his later filed motion to show cause,

the court appropriately declined to consider this tardy motion because Mr. Sakkarapope failed to note it for hearing. Thus, the court did not err in dismissing Mr. Sakkarapope's PDA claims as a matter of law. Moreover, the court dismissed the PDA claims without prejudice, so Mr. Sakkarapope would presumably still be able to pursue these claims.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

s/ Brown, J.

WE CONCUR:
s/ Schultheis, J.
s/ Kurtz, J.

1 20 U.S.C. sec. 1232(g).

FILED
MAR 5 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **ORDER GRANTING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the Honorable David Frazier, Judge of the Whitman County Superior Court, on Respondents' motion for Summary Judgment. The matter

was heard February 6, 2004. The Petitioner, Benjapon Sakkarapope, appeared pro se. Respondents State of Washington, the Board of Regents, and Washington State University were represented by Sheryl L. Gordon, Assistant Attorney General. The Court reviewed the pleadings, heard oral arguments from both parties, and considered the following documents and evidence:

1. Petition for Review and attachments;
2. Respondents' Motion for Summary Judgment and Memorandum in Support of Respondents' Motion for Summary Judgment;
3. Declaration of Counsel in Support of Motion for Summary Judgment and attachments;
4. Declarations of Richard Beckes, Robert C. Bates, Karen M. Fisher, Mary Furnari, Howard Grimes, and Kristen Pauli certifying the records;
5. The Certified Records transmitted to the Court on September 22, 2003;
6. Discovery submitted; and
7. Responsive pleadings of Petitioner filed February 5, 2004 (stricken as per memorandum opinion).

FINDINGS OF FACT

Based on the above-listed pleadings, arguments, documents and evidence, the Court makes and enters the following Findings of Fact.

1. In July of 1999, Mr. Sakkarapope began trying to obtain a Master of Science in Statistics (M.S.) degree at Washington State University (WSU or University).

2. WSU Graduate School policy requires all students to complete master's degrees within six years of the *earliest credits* used to satisfy the degree requirements.

3. Mr. Sakkarapope obtained the Graduate School's permission to count the credits he earned at WSU in 1994 toward his M.S. degree. Allowing the 1994 credits gave Mr. Sakkarapope until the end of the spring semester to complete his M.S. degree.

4. Mr. Sakkarapope was aware of the need to complete the M.S. degree on time and he used that requirement to apply for financial aid for the spring 2001 semester, stating in his application that "This Spring 2001 semester is my last semester to complete a master[sic] degree in statistics."
5. Mr. Sakkarapope did not complete his M.S. degree by the end of the spring 2001 semester. The department in which he was studying extended the deadline to August 2002.
6. The Dean of the Graduate School gave Mr. Sakkarapope permission to enroll for less than full-time (under-enroll) for one semester, fall 2000.
7. Mr. Sakkarapope was not given permission to under-enroll for any other semester.
8. Mr. Sakkarapope did not enroll enough credits to be full-time for several semesters, including fall 2002.
9. In fall 2002, Dr. Howard Grimes, Dean of the Graduate School, became aware that Mr. Sakkarapope was under-enrolled and had not completed his M.S. degree on time.
10. Dr. Grimes had the authority to decide whether Mr. Sakkarapope was allowed an extension of time complete his M.S. degree requirements.
11. Mr. Sakkarapope's advisor asked Dr. Grimes for additional extension of time for Mr. Sakkarapope to complete his M.S. degree requirements. Dr. Grimes determined that Mr. Sakkarapope was not making adequate progress toward his M.S. degree and was under-enrolled, and thus was in violation of Graduate School policy.
12. On December 18, 2002, Dr. Grimes granted the request for extension and set a new deadline for completion of *January 27, 2003*. The new deadline set by Dr. Grimes was reasonable. In setting the deadline, Dr. Grimes considered Mr. Sakkarapope's statement that he had been in Thailand on family business for part of the fall semester and the amount of work Mr. Sakkarapope must do to successfully complete the M.S. program.
13. Mr. Sakkarapope had the opportunity to complete the work necessary for the M.S. degree and graduate.

14. Dr. Grimes informed Mr. Sakkarapope of his academic deficiencies. Mr. Sakkarapope had an opportunity to respond to Dr. Grimes regarding his academic deficiencies. Mr. Sakkarapope was timely informed of the deadline and requirements to correct those deficiencies and complete his M.S. program.

15. Dr. Grimes granted and set reasonable conditions and requirements for the extension and communicated those to Mr. Sakkarapope. Dr. Grimes required that by January 27, 2003, Mr. Sakkarapope was to complete his M.S. program (a short paper), apply for graduation in the M.S. program, and schedule his project defense. Mr. Sakkarapope only needed to successfully complete these tasks to be eligible to graduate and receive the M.S. degree.

16. Mr. Sakkarapope refused to do any of the remaining tasks for completion of his M.S. degree. He wrote letters to Dr. Grimes indicating he would not comply with the deadline, and stating that he did not think Dr. Grimes had the authority to set a deadline. However, Dr. Grimes, acting in his capacity as Dean of the Graduate School, had the authority to make this decision and did so according to Graduate School policies and procedures.

17. On January 28, 2003, Mr. Sakkarapope had not accomplished any of the remaining tasks to earn his M.S. degree. Dr. Grimes then directed the Graduate School and Registrar to dismiss Mr. Sakkarapope from the M.S. program. He was not enrolled in any other program at WSU, and on January 31, 2003, WSU terminated his enrollment at the University.

18. WSU's dismissal of Mr. Sakkarapope from his M.S. program was an academic dismissal.

19. Dr. Grimes used his academic expertise and experience to make a determination in accordance with WSU policy that Mr. Sakkarapope was unlikely to successfully complete the M.S. program. Dr. Grimes made his decisions honestly, in good faith, and with due consideration of the facts and circumstances regarding Mr. Sakkarapope.

20. Mr. Sakkarapope presented no admissible evidence demonstrating a genuine issue of material fact concerning whether WSU breached his educational contract or whether WSU deprived him of due process of law when it dismissed him from the M.S. program.

21. WSU did not breach its educational contract with Mr. Sakkarapope by dismissing him from the M.S. program when he refused to complete the program after having been given an opportunity to do so.

22. On March 24, 1999, the Graduate School approved Mr. Sakkarapope's petition to attempt to obtain an Individual Interdisciplinary Doctoral Degree. This particular doctoral program is housed in the Graduate School.

23. The doctoral program required a candidate to take and pass a preliminary examination. On February 11, 2000, Mr. Sakkarapope had completed and failed both the written and oral portions of the preliminary examination.

24. Mr. Sakkarapope protested the outcome of the examination and requested the Graduate School review it. The Graduate School Dean, Dr. Karen DePauw, had the matter investigated and reviewed by the faculty and a faculty committee. Based on that investigation and information, she decided to affirm Mr. Sakkarapope's failure and dismissed him from the doctoral program.

25. Mr. Sakkarapope requested the decision be reviewed by then Interim Provost Dr. Ronald Hopkins, as provided in the Graduate School's policies and procedures. Dr. Hopkins reviewed the matter and issued a final decision letter based on his review. That decision letter was provided to Mr. Sakkarapope on February 1, 2001 by mailing it to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. The letter specifically advised. Mr. Sakkarapope that this decision represented the University's final decision.

26. Mr. Sakkarapope did not present admissible evidence or authority that he did not have to file a Superior Court appeal

of a final agency decision within 30 days after he received the decision.

27. Mr. Sakkarapope filed the Petition for Review in Whitman County Superior Court of WSU's action dismissing him from his doctoral program more than 30 days after he received the final agency decision mailed February 1, 2001. Mr. Sakkarapope's appeal was filed more than 30 days after he received the University's written rejections of his efforts to have the decisions reviewed by others, including the Board of Regents.

28. On March 14, 2002, at Mr. Sakkarapope's request, the Unviersity scheduled a Student Records Committee (SRC) to review the completeness and accuracy of his educational record that had been provided for his review under the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA). The SRC held a Brief Adjudicative Proceeding on March 27, 2002, and reviewed M. Sakakrapope's records pursuant to WAC 504-21-040.

29. On April 5, 2002, the SRC issued an initial order in the matter and mailed that order to Mr. Sakkarapope at his proper address. It is undisputed that Mr. Sakkarapope timely received that letter. In that order, the SRC determined that Mr. Sakkarapope had been provided his entire educational record, except for some of his records from a Department of Agricultural and Resources Economics file. The SRC appended those records to its order. The decision letter stated that "with the inclusions in his letter, the University has fully complied with your request for the release of [your] educational records under FERPA." The decision also contained an express statement that Mr. Sakakrapope could come in and review his records. It also clearly informed him that under WAC 504-21-080, he had the right to submit a written view of the records to the Provost.

30. On September 23, 2002, Mr. Sakkarapope asked for review of the decision by the current Provost, Dr. Robert Bates. Dr. Bates reviewed the records and the initial order, and issued a final decision letter that was mailed to Mr.

Sakkarapope at his proper address on November 6, 2002. It was undisputed that Mr. Sakkrapope timely received that letter. The November 6, 2002, final decision letter affirmed that SRC's initial decision and clearly informed Mr. Sakkarapope that he could review his education record at the Graduate School and the Department of Agriculture and Resources Economics. The letter also contained an express notice that this was the University's final decision, and a notice of Mr. Sakkarapope's right to appeal WSU's final decision to the Superior Court within 30 days in accordance with RCW 34.05.514 and .542.

31. Mr. Sakkarapope's Petition for Review of that decision was filed with the Whitman County Superior Court on July 23, 2003, more than 30 days after the received the decision letter.

32. Mr. Sakkarapope, wishing to initiate a public records dispute, included in public records dispute in his Petition for Review of the agency's actions, requesting relief under the Administrative Procedures Act, RCW 34.05.

33. Mr. WSU is prejudiced by the public records dispute before the Court as an administrative appeal because an appeal of an agency action is based on the record, and WSU is unable to present new evidence, including witness of affidavits in defense of its actions and responses to Mr. Sakkarapope's public records requests.

CONCLUSION OF LAW

Based on the findings above, the Court makes and entered the following Conclusions of Law:

1. No genuine issue of material fact exists in this action and WSU is entitled to a judgment as a matter of law.

2. The Court can review only final agency actions or orders under the Administrative Appeals Act. The only final agency actions or decisions set forth in the Petition for Review are the appeal of Mr. Sakkarapope's dismissal from his doctoral program, the appeal of Mr. Sakkarapope's dismissal from his M.S. program, and the order entered November 6, 2002 by

the agency regarding the accuracy and completeness of the educational records provided to Mr. Sakkarapope.

3. This Court lack subject matter jurisdiction over the appeal of the November 6, 2002, final decision following a Brief Adjudicative Proceeding held March 27, 2002, to determine the accuracy and completeness of the educational records as provided to his pursuant to the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. pt. 99 (FERPA), and WAC 504-21-040. Mr. Sakkarapope filed his judicial appeal beyond the statute of limitations set forth in RCW 34.05.

4. This Court lacks subject matter jurisdiction over the February 1, 2001, final agency action dismissing Mr. Sakkarapope on academic grounds from his doctoral program. Mr. Sakkarapope filed his judicial appeal of that agency action beyond the statute of limitation set forth in RCW 34.05.

5. WSU's decision dismissing Mr. Sakkarapope from his M.S. program on academic grounds was not arbitrary and capricious.

6. WSU afforded Mr. Sakkarapope all process due before dismissing him on academic grounds from his M.S. program.

7. Mr. Sakkarapope did not meet his burden of demonstrating the invalidity of WSU's actions dismissing him from the M.S. program. WSU's academic dismissal of Mr. Sakkarapope from the M.S. program should be affirmed.

8. Mr. Sakkarapope's dispute regarding WSU's responses to his public records requests should be filed pursuant to RCW 42.17.340(1). It is therefore not properly before this Court and should be dismissed without prejudice.

ORDER

IT IS ORDERED that:

1. Respondents' Motion for Summary Judgment is granted;
2. The Petitioner's appeal of his dismissal from his Individual Interdisciplinary Doctoral Degree program on February 1, 2001, is dismissed for lack of subject matter jurisdiction.

3. The Petitioner's appeal of the order of November 6, 2002, determining that his educational record as provided to him under FERPA was accurate and complete is dismissed for lack of subject matter jurisdiction;
4. The Respondent's action of January 28, 2003, dismissing Mr. Sakkarapope from his Master of Science in Statistics program on academic grounds is affirmed; and
5. The Petitioner's causes of action against WSU regarding the Public Records Act are dismissed without prejudice as they are not properly before the Court.
6. *This is a final decision on the issues that were raised in the Summary Judgment hearing. This court will hear no further motions or applications from either party on these issues. Any objection, dispute or disagreement with this order must be addressed to the appellate court(s), not this trial court*[*].

DATED this 5th of March, 2004

s/ David Frazier
Honorable David Frazier

[*] The item #6 of the order was originally in hand-written by the trial court as additional to the proposed order after Sakkarapope's objections to the proposed findings of facts and conclusion of law were heard at the presentment hearing of March 5, 2004.

FILED
FEB 17 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **MEMORANDUM DECISION ON MOTION FOR SUMMARY JUDGMENT**

THIS MATTER came before the court on February 6, 2004 for a hearing on respondents' motion for summary judgment. Respondents (hereafter referred to as "WSU") appeared through Sheryl L. Gordon, Assistant Attorney General: petitioner (hereafter referred to as "Sakkarapope") appeared pro se. At the conclusion of Argument, the court took its decision under advisement for further review and consideration. Based on that review, the court hereby enters the following decision.

Procedural Background

The following procedural background is relevant to the present motion for summary judgment:

1. On July 23, 2003, Sakkarapope filed a Petition for Review seeking review of numerous actions, proceedings, and decisions made by officials at WSU concerning Sakkarapope and his status as a graduate student at the university. The petition also sought review of WSU's responses to several public records requests made by Sakkarapope, together with an award of monetary compensation for personal injuries and damages to Sakkarapope's reputation.

2. Sakkarapope's Petition for Review specifically alleges that it is brought pursuant to RCW 34.05.510 et. seq. and RCW 42.17.340. The petition consists of 19 pages, together with 10 separate attachments consisting of a total of approximately 150 pages. The various attachments itemize and challenge the legality of numerous proceedings, decisions and actions taken by WSU. Attachment I to the petition, for instance, makes reference to 35 actions or decisions made by WSU officials, Attachment II relates to 7 decisions and actions of the WSU Student Records Committee, Attachment III pertains to 16 public records requests made by Sakkarapope, and Attachment IV lists WSU's denials of his public record requests.

3. As illustrated in Attachment V and VI to the Petition for Review, which are essentially timelines Sakkarapope prepared of activities and decisions involved in his appeal, almost all alleged action took place before June 15, 2003.

4. The casefile in this action presently consists of 17 separate court files that fill one large filing cabinet drawer in the office of the Whitman County Clerk. Most of these contain what WSU purports to be the certified record of underlying agency proceedings, although a large portion of the file pertains to discovery requests propounded by Sakkarapope and WSUs' responses thereto. This discovery relates to Sakkarapope's position that the certified record filed by WSU in this action is not accurate and complete, and involves his attempts to amend and supplement this record.

5. WSU's motion for summary judgment alleges that Sakkarapope's Petition for Review only addresses three final actions by WSU that would be subject to appeal under the Washington Administrative Procedure Act. RCW Chapter 34.05. According to WSU, these three final decisions were the following:

a. WSU's decision to dismiss Sakkarapope on academic grounds from the Individual

Interdisciplinary Degree Doctoral Program (IIDP), citing page 2 of the Petition for Review, line 7-14.

b. WSU's decision to dismiss Sakkarapope on academic grounds from his Masters of Sciences in Statistics program, citing page 3 of the Petition for Review, lines 1-3.

c. WSU's decision that Sakkarapope's academic records is accurate pursuant to Family Educational Right and Privacy Act, 20 U.S.C. §1232g; 34 C.F.R. Part 99 (FERPA), and WAC 504-21-040, citing page 2 of the Petition for Review, lines 7-14.

6. In its summary judgment motion, WSU asks this court to dismiss the IIDP and FERPA challenges as untimely because Sakkarapope failed to file his appeal of those decisions within the statute of limitations or, in the alternative, to affirm WSU's decision dismissing Sakkarapope from his IIDP and his Master of Science in Statistics programs on merits and as a matter of law. In addition, WSU seeks dismissal of Sakkarapope's appeal if WSU's responses to his public records requests on the grounds that such review is beyond the scope and authority of the Superior Court in the context of an administrative appeal under RCW Chapter 34.05.

7. Sakkarapope did not file his response to WSUs' summary judgment motion until February 5, 2004, the day immediately before the scheduled summary judgment hearing. That response is entitled Memorandum In Support of Petitioner's Defense. On February 6, 2004, he filed a document entitled Index of Certified Records.

8. In his response to WSU's summary judgment motion, Sakkarapope claims that his Petition for Review was timely filed, as he attempted to exhaust his administrative remedies by cumulatively appealing decisions that were made to various organizational levels at WSU, culminating in an eventual attempt in January of 2003 to have his concerns heard at a meeting of the WSU Board of Regents. When the Board of Regents refused to consider his case, Sakkarapope

filed a petition with the Governor in May of 2003. He also asserts, among other things, that he is not appealing or seeking this court's review of whether WSU fully complied with his request for the release of education records under FERPA, that the certified record filed by WSU in this matter is not complete, and that he has separately and properly joined his public records request issue under RCW 42.17.340 with his APA appeal of WSU's administrative decisions and actions.

Discussion

The court has spent considerable time reviewing the lengthy casefile in this matter, and in reviewing the pleading relating to the present motion. In all candor, the court finds Sakkarapope's original Petition for Review, his Memorandum in Support of Petitioner's Defense, and many of his other pleadings poorly written, unreasonably lengthy, confusing, and difficult to follow and understand. As stated earlier, the memorandum in Support of Petitioner's Defense, which is Sakkarapope's primary response to WSU's motion for summary judgment, was filed on day before the summary judgment motion was scheduled for hearing. As such, it is untimely under CR 56(c), and must therefore be stricken by the court in its consideration of the issues presented. Specifically, CR56(c) requires the party opposing summary judgment to file and serve responsive pleadings and other documentation "not later than 11 calendar days before the hearing." As a litigant appearing pro se, Sakkarapope is not entitled to special treatment, but is bound by the same rules of procedure and substantive law that apply to a litigant that is represented by counsel. *State v. Fritz*, 21 Wash. App. 354 (1978); *Bonney Lake v. Delany*, 22 Wash. App. 193 (1978); *Bly v. Henry*, 28 Wn. App. 469 (1980). Even if Sakkarapope's response were not stricken, however, the court's review of that document discloses that it presents little evidence, if any, that would raise a genuine issue of fact material to the issues presented, and no valid legal authority

that would support a denial of WSU's motion for summary judgment.

RCW 34.05.542(2) provides that a Petition for Review of an agency order must be file with the court within thirty days after service of the final order. Similarly, a Petition for Review of an agency action must be filed within thirty days after the agency action. RCW 34.05.542(3). These time requirements are jurisdictional—if the time limits are not met, the court lacks subject matter jurisdiction to hear the appeal, and the petition must be dismissed. *Tarabochia v. Town of Gig Harbor*, 28 Wn.App. 119 (1981).

Despite Sakkarapope's arguments to the contrary, WSU's final decision to terminate him from the IIDP was made and communicated to Sakkarapope on February 1, 2001. On that date, WSU Provost, Dr. Ronald Hopkins, sent Sakkarapope a letter affirming Dean DePauw's decision to dismiss Sakkarapope from the doctorate program (CR 273). The letter specifically advised Sakkarapope that this decision represented the University's final decision. Under RCW 34.05.542, therefore, Sakkarapope had thirty days from February 1, 2001 to file his Petition for Review with the Superior Court. His failure to file such a petition from approximately 28 months after this date deprives the court of jurisdiction to review WSU's decision. The fact that Sakkarapope disagreed with the provost and felt he was entitled to repeated reconsideration and review within various levels of WSU's organizational structure, including the Board of Regents, is without merit. Sakkarapope has presented no valid legal authority to support a right to such further review, or to consideration by the Governor's Office, and even if such right were found to exist, Sakkarapope's appeal is still untimely. In every instance where Sakkarapope sought further administrative review of his termination from the IIDP, WSU's written rejections of these efforts was received well over 30 days from the date of the Petition for Review was filed.

Despite statements in the Petition for Review to he contrary, Sakkarapope now asserts that he is not seeking judicial review of WSU's decisions relative to his educational records under FERPA. Even if he had south such review, the record undisputedly establishes that WSU's final decision on the accuracy and completeness of Sakkarapope's educational records was issued on November 6, 2002 (CR 620-21), and that the Petition for Review was not filed for some eight month thereafter. Like the IIDP appeal, such lengthy delay in seeking judicial review of this decision deprives the court of jurisdiction to hear and determine this case. The court will enter an order pursuant to both Sakkarapope's request and to WSU's motion for summary judgment, dismissing the FERPA questions as an issue for this court's review.

In his Petition for Review, Sakkarapope not only sought review of administrative decisions made by WSU under 34.05.510 et. seq., but he claimed that WSU violated the Open Public Records Act, and he sought relief for this violation pursuant to RCW 42.17.340. As WSU argues, however, an appeal under the APA is a review on the record, whereas an Open Public Records Act dispute is an original action initiated by an order to show cause. An Open Public Records Act Challenge is based not just on the agency record, but also upon the presentation of new evidence. RCW 34.05.558; RCW 42.17.340(1). Sakkarapope's issues pertaining to his public records requests are therefore not properly before the court, and are subject to summary dismissal without prejudice.

WSU additionally requests summary judgment affirming its decision dismissing Sakkarapope from his Master of Science in Statistics program. In support of this request, WSU refers the court to the administrative record that it filed and certified in this case. WSU argues that this record supports a finding that Sakkarapope refused to complete his Masters Degree after given a reasonable opportunity to do so, and that it was this refusal that led to his

dismissal from the Masters program. Once the moving party sustains the initial burden in a summary judgment proceeding of coming forward with evidence that the case involves no genuine issue of material fact, the burden then shifts to the nonmoving party to show that a genuine issue of material fact does exist. *Fischer-McReynolds v. Quasim*, 101 Wn. App. 801 (2000). If the nonmoving party cannot demonstrate that factual issues exist, summary judgment is appropriate. Id. The nonmoving party cannot simply rely on argument and the pleadings, but must come forward with admissible evidence. CR 56(c). Despite statements in the pleadings and arguments to the contrary, Sakkarapope has presented no admissible evidence to support his positions, and he as failed to raise a genuine issue of fact as to his claim that WSU breached his educational contract or that WSU deprived him of due process of law. This is particularly true given the fact that the court must strike his responsive pleading under CR 56(c). As a result. WSU is entitled to summary judgment affirming Sakkarapope's dismissal from his Master's program.

Decision and Order

Based on the foregoing discussion, it is hereby Ordered as follows:

1. WSU's motion for summary judgment dismissing that portion of Sakkarapope's Petition for Review seeking judicial review of WSU's decision to terminate Sakkarapope from the IIDP will be granted.

2. That portion of Sakkarapope's Petition for Review arguably seeking review of WSU's decision relating to the accuracy and completeness of his educational records under FERPA will be dismissed.

3. WSU's motion for summary judgment dismissing that portion of Sakkarapope's Petition for Review seeking review of WSU decisions under the Open Public Records Act will be granted. Such dismissal will be without prejudice to Sakkarapope's right, if any, to bring an independent action under RCW 42.17.340.

4. WSU's motion for summary judgment affirming its decision dismissing Sakkarapope from his Master of Science in Statistics program will be granted.

5. Counsel for WSU shall prepare an order in accordance with CR 56 that is consistent with this decision and, if necessary, shall note the dame for presentment.

DATED: February 17, 2004.

s/David Frazier
JUDGE

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 30 2006
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; ET AL., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **JUDGMENT**

Appeal from the United States District Court FOR THE Eastern District of Washington (Spokane).

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Eastern District of Washington (Spokane) and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 02/22/06

A TRUE COPY
CATHY A. CATTERSON
Clerk of Court
ATTEST
JUN 27 2006
s/ Gabriela Van Allen
By Deputy Clerk

FILED
FEB 22 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; ET AL., Defendants-Appellees.	No. 04-35643 D.C. No. CV-04-00074-JLQ **MEMORANDUM***

Appeal from the United States District Court
For the Eastern District of Washington
Justin L. Quackenbush, District Judge, Presiding
Submitted February 13, 2006**

Before: FERNANDEZ, RYMER, and BYBEE, Circuit Judges.

Benjapon Sakkarapope appeals pro se from the district court's judgment dismissing his 42 U.S.C. §1983 action alleging violation of the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g. We have jurisdiction under 28 U.S.C. 1291. After de novo review, *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1442 (9th Cir. 1989), we affirm.

The district court properly dismissed Sakkarapope's claims against defendant Board of Regents because the Board is not a "person" within the meaning of 42 U.S.C. §1983. *See id.* at 1443. Moreover, even if the State of Washington has

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

waived its sovereign immunity to 42 U.S.C. §1983 actions in its own courts, it has not done so in the federal courts. *See McConnell v. Critchlow,* 661 F.2d 116, 117 (9th Cir. 1981).

The district also properly dismissed Sakkarapope's claims against the Secretary of Education because FERPA does not create a private right of action. *See Gonzaga University v. Doe,* 536 U.S. 273, 287 (2002).

Sakkarapope's remaining contentions are unpersuasive.

Sakkarapope's pending motions are denied.

Appellee's motion to strike is granted.

AFFIRMED

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 22 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v.	JUDGMENT IN A CIVIL CASE
THE BOARD OF REGENTS, WSU, et al., Defendants.	CASE NUMBER: CV-04-00074-JLQ

Decision by Court. This action came to hearing the Court. The issues have been heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED Washington State University's motion for Summary Judgment is GRANTED. Plaintiff's Complaint and the claims therein are DISMISSED WITH PREJUDICE.

June 22, 2004
Date

JAMES R. LARSEN
Clerk
s/ Renea Ferrante
(By) Deputy Clerk

FILED IN THE
U.S. DISTRICT COURT
Eastern District of Washington
JUN 22 2004
JAMES R. LARSEN, CLERK
_____DEPUTY
SPOKANE. WASHINGTON

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BENJAPON SAKKARAPOPE, Plaintiff, v. THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, and THE SECRETARY, THE UNITED STATE DEPARTMENT OF EDUCATION, Defendants.	No. CV-04-00074-JLQ **MEMORANDUM OPINION AND ORDER GRANTING DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT AND DIRECTING JUDGMENT OF DISMISSAL**

BEFORE THE COURT is Defendant WSU's Motion for Summary Judgment (Ct. Rec. 16) and the issues raised in this court's prior Order to Show Cause (Ct. Rec. 21) and the subsequent briefing of the parties (Ct. Rec. 36, 38, 44). A teleconference was held regarding the Order to Show on May 25, 2004. The Motion for Summary Judgment was taken under submission without oral argument on June 7, 2004. Plaintiff, **Benjapon Sakkarapope**, is proceeding *pro se* in this matter. Defendant, the Board of Regents of Washington State University ("WSU") is represented by Assistant Attorney General **Holly Vance**. Defendant, the Secretary of Education, is represented by Assistant United States Attorney **Rolf H. Tangvald.**

BACKGROUND

Plaintiff is a national of Thailand and former WSU student. Plaintiff was a candidate for a Ph.D program in

Agricultural Economics and a Masters degree student in Statistics. Plaintiff failed the preliminary qualifying exam for the Ph.D. program in January of 2000, and was notified in April of 2000 that he would be dropped from the program. While appealing his dismissal from the Ph.D. program through the administrative process at WSU, Plaintiff continued to be enrolled as a Masters degree students in Statistics. Plaintiff failed to complete the requirements for the Master degree program in a timely manner and was disenrolled in February 2003.

Plaintiff has contested his dismissal over the last four years by sending numerous letters to WSU and involving the Washington Attorney General's Office in his public records request. He also has allegedly filed a petition with the Secretary of the U.S. Department of Education to enforce compliance under the Family Education Rights and Privacy Act ("FERPA"). The petition was denied. Plaintiff also filed a petition for review of WSU's actions in the Superior Court of Whitman County on July 23, 2003. (Ct. Rec. 6). A hearing for summary judgment was held in that case on February 6, 2004. On February 17, 2004, the Superior Court entered a "Memorandum Decision On Motion For Summary Judgment". (Ct. Rec. 19, Deft. Ex. B). The memorandum decision stated that summary judgment "will be granted" as to WSU's decision to dismiss Plaintiff from the Ph.D. and Masters programs. (Id). It also stated that the portion of the petition seeking review of WSU's actions under FERPA was untimely and "will be dismissed". (Id). The decision then directed WSU to prepare and order in accordance with the court's decision.

Apparently while WSU was preparing this order, Plaintiff decided to file a lawsuit in federal court on February 24, 2004. (Ct. Rec. 1). Plaintiff now brings a 42 U.S.C. §1983 action alleging violation of his federal right under FERPA and that disenrollment from the Masters in statistics program at WSU violated his due process rights. (Ct. Rec. 1). Plaintiff then filed a "Motion for Supplemental Jurisdiction"

on March 4, 2004, in which he represented that "the state court has not yet entered any ruling in the case" (Ct. Rec. 5), and apparently sought this court to stay the state court proceeding and "take" the case from the state court. A final decision was entered by the Superior Court of Whitman County on March 5, 2004. (Ct. Rec. 19, Deft. Ex. C). The final decision dismissed Plaintiff's FERPA claim for lack of subject matter jurisdiction and found that WSU's decision to dismiss Plaintiff from the Masters in statistics program on academic grounds was not arbitrary and capricious and that Plaintiff was afforded 'all process due". (Id). Plaintiff filed a notice of appeal to the state of Washington Court of Appeals on March 5, 2004. (Ct. Rec. 19, Deft. Ex. D).

I. Rooker-Feldman

This court issued an Order to Show Cause believing that allocation of the *Rooker-Feldman* doctrine may result in an absence of subject matter jurisdiction and dismissal of Plaintiff's action. After reviewing the parties briefing, holding a hearing and consulting recent Ninth Circuit caselaw, the court finds that the *Rooker-Feldman* doctrine does not preclude subject-matter jurisdiction in this case.

The *Rooker-Feldman* doctrine, so named for the cases of *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923) and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 464 (1983), prohibits a losing plaintiff in state court from bring a suit in federal court asserting as legal wrongs the allegedly erroneous legal rulings of the state court and seeking to set aside the judgment of the court. Such a suit is a "forbidden de facto appeal". *Noel v. Hall,* 341 F.3d 1148, 1156 (9th Cir. 2003). Although it could reasonably be argued that Plaintiff's federal suit is a de facto appeals of his adverse state court ruling, recent Ninth Circuit decisions dictate that a district court use caution when determining whether the doctrine applies. The *Noel* court observed it is "commonplace" for district courts to complain that the "doctrine is difficult to apply". 341 F.3d at 1162. The *Noel* court then stated, "where the federal plaintiff does not

complain of a legal injury caused by a state court judgment, but rather of a legal injury caused by an adverse party, *Rooker-Feldman* does not bar jurisdiction. " *Id.* at 1163.

More recently in *Maldonado v. Harris*, ____F.3d____ (9th Cir. June 4, 2004), the Ninth Circuit, relying on *Noel*, reversed the district court's determination that the doctrine applied and cautioned that although a suit not barred by *Rooker-Feldman* may nonetheless be claimed-precluded, claim preclusion and *Rooker-Feldman* are distinct inquiries. *Id.* at ___. The Maldonado court noted that even though plaintiff's complaint sought relief from the injunction entered by the state court, *Rooker-Feldman* did not apply. The court stated that in order for *Rooker-Feldman* to apply, "a plaintiff must seek not only to set aside a state court judgment; he or she must also allege a legal error by the state court as the basis for relief." *Id.* at ___. These recent Ninth Circuit cases leave the definite impression that the doctrine is to be applied to dismiss an action only sparingly. Although Sakkarapope may now raise the same claims he made in the state court, he does not specifically seek to vacate the state court judgment nor does he specifically allege a legal error by the state court as the basis for his relief in federal court. Therefore, the *Rooker-Feldman* doctrine does not apply.

II. Eleventh Amendment Immunity

In its summary judgment motion, Defendant WSU argues that it is an "arm of the state" entitled to immunity from suit under the Eleventh Amendment. Additionally as an "arm of the state" WSU argues that the Washington State University Board of Regents is not a "person" within the meaning of 42 U.S.C. §1983, and is therefore not subject to liability. The court finds merit with both arguments.

The Eleventh Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign States." U.S. Const. amend XI, and represents, "a real limitation on a federal

court's federal-question jurisdiction," *Idaho v. Coeur d'Alene Tribe,* 521 U.S. 261, 270(1997). Generally a state created and funded university is considered an instrumentality, or arm, of the state and is entitled to Eleventh Amendment immunity. See *Rounds v. Oregon State Bd. Of Higher Education.*, 166 F.3d 1032 (9th Cir. 1999)(finding University of Oregon was "arm of the State" entitled to immunity); *Goodisman v. Lytle*, 724 F.2d 818 (9th Cir. 1984)(University of Washington is an arm of the state).

WSU is similarly created, funded, and controlled by the State and is therefore considered an arm of the state and entitled to immunity under the Eleventh Amendment to the same extent as the University of Washington. See *Spaulding v. University of Wash.,* 740 F.2d 686, 692 (9th Cir. 1984)(overruled on other grounds); *Hontz v. State*, 105 Wash. 2d 302 (1986)(University of Washington is state agency). Additionally, the state and its agencies are not persons subject to suit under 42 U.S.C. §1983. *Will v. Michigan Dept. of State Police,* 491 U.S. 58, 65 (1989); *Thompson v. City of Los Angeles,* 885 F.2d 1439, 1443 (9th Cir. 1989)(dismissal of civil rights lawsuit was warranted against University of California Board of Regents because is not a "person" within the meaning of §1983).

III. Collateral Estoppel/Res Judicata

WSU also contends that the doctrine of res judicata prohibits Plaintiff from bringing claims that were raised, or could have been raised, in the prior adjudication. WSU contends that Plaintiff's FERPA and Due Process claims are both precluded under the res judicata doctrine by reason of the prior state court action. Alternatively, WSU contends that the doctrine of collateral estoppel applies to the issue of the alleged wrongful dismissal from the Masters statistics program.

When the former judgment is a state court judgment, as is the case here, this court must apply the res judicata and collateral estoppel rules of the state that rendered the underlying judgment. *Migra v. Warren City School Dist. Bd.*

Of Ed., 465 U.S. 75 (1984). Federal courts must give the same preclusive effect to a state court judgment as another court of that state would give. See 28 U.S.C. §1738; *Palomer Mobilehome Park Ass'n v. City of San Marcos,* 989 F.2d 362, 364 (9th Cir. 1993). Under Washington law, res judicata bars relitigation of claims that were or should have been decided among the parties in an earlier proceeding. *See Loveridge v. Fred Meyer, Inc.*, 887 P.2d 898, 900 (Wash. 1995) Res judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. There must be identity of: 1) subject matter; 2) cause of action; 3) persons and parties; and 4) the quality of the persons for or against whom the claim is made. *Rains v. State,* 100 Wash. 2d 660, 665 (1983). Collateral estoppel applies if: 1) the issues decided in the prior adjudication is identical with the one presented in the current action; 2) there was a final judgment on the merits; 3) the party against whom the plea is asserted was a party or in privity to the prior adjudication; and 4) the application of the doctrine will not work an injustice on the party against whom the doctrine is to be applied. *Id.* at 664.

WSU and Mr. Sakkarapope were both parties to the prior state court action. Mr. Sakkarapope alleged then, as he does now in federal court, that WSU wrongfully dismissed him from the Masters in statistics program without Due Process and raised the issues of his FERPA request for release of education records in his Petition for Review. Mr. Sakkarapope later represented to the state court that he was not seeking review of WSU's FERPA compliance and the state court ordered that Plaintiff's claims "arguably seeking review of WSU's decisions relating to the accuracy and completeness of his educational records under FERPA will be dismissed." (Feb 17, 2004 Memorandum Decision, Ct. Rec. 19, Ex. B). The state court entered a final judgment, which Plaintiff appealed. The res judicata and collateral estoppel doctrines apply to state trial court judgments even if an appeal is pending. *City of Des Moines v. $81,231,* 943

P.2d 669, 674-76 (Wash. App. 1997)("a judgment becomes final for res judicata purposes at the beginning, not the end of the appellate process" and "Similarly, with collateral estoppel, a party is precluded from relitigating issues previously determined while an appeal as to those issues is pending."). The same rule applies in federal court. *Tripati v. G.L.Henman,* 857 F.2d 1366, 1367 (9th Cir. 1988)("To deny preclusion in these circumstances would lead to an absurd result: Litigants would be able to refile identical cases while appeals are pending, enmeshing their opponents and the court system in tangles of duplicative litigation.").

Application of the res judicata doctrine to this matter is appropriate to prevent Sakkarapope from enmeshing the Defendants and this court in the tangles of duplicative litigation. Additionally, Plaintiff is collaterally estopped from bringing a §1983 action against WSU alleging his constitutional right to Due Process was violated when he was dismissed from the Masters in statistics program. Both WSU and Mr. Sakkarapope were parties to the state court action and the identical issues were raised by Sakkarapope against WSU. The state court entered a final judgment deciding the issue and application of the collateral estoppel doctrine will not work an injustice, therefore all four elements for the application of collateral estoppel are met. Plaintiff had a full and fair opportunity to argue his claim in state court, with the court stating it had "spent considerable time reviewing the lengthy casefile" and that Plaintiff's pleadings were "unreasonably lengthy, confusing, and difficult to follow". This court concurs that Plaintiff has a tendency to submit overlength pleadings and voluminous exhibits. The Plaintiff's §1983 claim arising from his dismissal from the Masters and Doctoral programs are barred by the adverse decision of the Washington state superior court.

IV. FERPA Claim against Secretary of Education

With the disenrollment from the graduate program claims against WSU dismissed on the basis of res judicata/collateral estoppel, or alternatively on Eleventh

Amendment immunity, the only remaining claim is the FERPA claim against the Secretary of Education. The Secretary contends that Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based in violation of FERPA. This contention is correct. The United States Supreme Court has clearly held that the provisions of FERPA create no personal rights to enforce under 42 U.S.C. §1983. *Gonzaga University v. Doe*, 536 U.S. 273, 276 (2002). Plaintiff contends that the statutory subsection at issues in *Gonzaga*, §1232g(b), is not the same as the subsection he asserts his claim under, §1232g(a), and therefore *Gonzaga* is not controlling. However, this court does not read *Gonzaga* so narrowly, nor do subsequent Circuit decisions support Plaintiff's argument. See *Desyllas v. Bernstine*, 351 F.3d 934, 941 n.2 (9th Cir. 2003)("The statutory scheme[20 U.S.C. §1232g(b)(1)] does not create a private right of action for a student to sue under 42 U.S.C. §1983."); *Taylor v. Vermont Department of Education*, 313 F.3d 768, 786 (2nd Cir. 2002)("we find that *Gonzaga* compels the conclusion that FERPA's record-access provisions, §1232f(a)(1), do not create a personal right enforceable under §1983"); *Missouri Child Care Ass'n v. Cross*, 294 F.3d 1034, 1040 (9th Cir. 2002)(reading *Gonzaga* to hold that FERPA does not create any private right to enforcement); *United States v. Miami Univ.*, 294 F.3d. 797, 809 (6th Cir. 2002)(reading *Gonzaga* to hold FERPA does not creates that an individual may enforce through §1983).

Plaintiff may not assert a §1983 against the Secretary, or anyone else for that matter, based on the alleged violation of FERPA provisions.

CONCLUSION

Although application of the *Rooker-Feldman* doctrine is arguably appropriate in this matter, the court has determined that it does have subject matter jurisdiction. The court has made a separate inquiry and determined that Plaintiff's claims against WSU are barred by the doctrines of res judicata and collateral estoppel. Additionally, this court

finds that WSU is immune from suit under the Eleventh Amendment to the extent Plaintiff seeks monetary damages. WSU, as an arm of the state or state agency, is also not a "person" for purposes of §1983 and accordingly cannot be sued for damages under §1983. Plaintiff does not have a private right of action to bring a 42 U.S.C. §1983 suit based on violation of FERPA.

Accordingly, and for all the foregoing reasons,

IT IS HEREBY ORDERED:

1. WSU's Motion for Summary Judgment is **GRANTED**. (Ct. Rec. 16).

2. Plaintiff's Complaint and the claims therein are **dismissed with prejudice.** (Ct. Rec. 1)

IT IS SO ORDERED. The Clerk is hereby directed to file this Order, enter Judgment in favor of Defendants dismissing the Complaint and claims therein with prejudice, furnish copies to Plaintiff and counsel, and close this file.

DATED this 21st day of June, 2004.

s/ Justin L. Quackenbush
JUSTIN L. QUACKENBUSH
SENIOR UNITED STATES DISTRICT JUDGE

FILED
DEC 13 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Petitioner, v. ALBERTO R. GONZALES, Attorney General, Respondent.	No. 05-75413 Agency No. A72-571-155 **MEMORANDUM***

On Petition for Review of an Order of the Board of Immigration Appeals
Submitted December 4, 2006**
Before: GODDWIN, LEAVY, and FISHER, Circuit Judges.

Benjapon Sakkarapope, a native and citizen of Thailand, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's ("IJ") decision findings Sakkarapope removable. To the extent we have jurisdiction, it is conferred by 8 U.S.C. § 1252. We review for substantial evidence an IJ's findings of fact. *See Smolniakova v. Gonzales*, 422F.3d 1037, 1044 (9th Cir. 2005)*;see also* 8 U.S.C. § 1252(b)(4)(B). We review de novo claims of due process violations. *See Sanchez-Cruz v. INS*, 255 F.3d 775, 779 (9th Cir. 2001). We dismiss in part and deny in part the petition for review.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Sakkarapope was admitted as a nonimmigrant student, and his status continued as he "pursu[ed] a full course of study at an educational institution." 8 C.F.R. 214.2(f)(5)(i). At his removal hearing in 2004, Sakkarapope testified that he had not been enrolled at Washington State University since 2003 and that he was not currently enrolled as a student anywhere. Accordingly, the IJ's finding that Sakkarapope was no longer a student is supported by substantial evidence, and Sakkarapope was removable pursuant to 8. U.S.C. § 1227(a)(1)(C)(i) for failing to maintain his status.

Sakkarapope's contention that he was denied due process in his removal proceedings is not supported by the record. *See Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000) (due process claims require showing that proceedings were "so fundamentally unfair that the alien was prevented from reasonably presenting his case").

We lack jurisdiction to review the agency's decision to commence proceedings. *See* 8 U.S.C. § 1252(g) ('no court shall have jurisdiction to hear any cause of claim by or on behalf of any alien from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter").

Sakkarapope's remaining contentions lack merit.

We grant Sakkarapope's motion file a late reply brief. The Clerk shall file the reply brief received on April 28, 2006.

PETITION FOR REVIEW DISMISSED in part; DENIED in part.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals
File: A72 571 155- Seattle Date: Sept 12, 2005
In re: BENJAPON SAKKARAPOPE
IN REMOVAL PROCEEDINGS
APPEAL
ON BEHALF OF RESPONDENT: Pro se
ON BEHALF OF DHS: Gregory E. Fehlings
Deputy Chief Counsel
CHARGE:

Notice: See 237(a)(1)(C)(i), I&N Act [8 U.S.C. §1227(a)(1)(C)(i)]-Nonimmigrant-violated conditions of status

APPLICATION: Termination of proceedings; cancellation of removal*
ORDER:

PERCURIAM. The appeal is dismissed. The Immigration Judge's decision is adopted and affirmed as no clear error has been shown with respect to the Immigration Judge's factual findings. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also*, 8 C.F.R. § 1003.1(d)(3)(i).

The central issue here concerns whether the respondent properly maintained his "F-1" student-visa status. *See* section 101(a)(15)(F) of the Immigration and Nationality Act, 8 U.S.C. §1101(a)(15)(F). The respondent maintains that Washington State University wrongfully disenrolled him,

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* The respondent's appellate suggestion, the Convention Against Torture ("CAT") prevents his removal is not a claim properly before us, as the respondent did not apply for this below. Moreover, he has failed to show he is newly *prime facie* eligible for CAT relief, as he merely asserts that he was "tortured" by United States citizen in their alleged refusal to allow him to continue his course of study. See Respondent's Brief at 47. *See* 8 C.F.R. §§1208.16, 1208.18.

but he has conceded to the fact that his dis-enrollment actually took place in January 2003 (Tr. At 41-43). No clear error has been show with the factual finding, supported by ample evidence, that the respondent was no longer enrolled in a course of study. Thus, the Immigration Judge properly determined that the respondent failed to maintain the conditions of his status. Why an alien failed maintain status is generally irrelevant with respect to removability. *See Matter of Teberen,* 15 I&N Dec, 689, 690 (BIA 1976). Thus, we are not concerned with the respondent's collateral legal challenge to the university's action or the propriety of the action itself* Accordingly, the Immigration Judge properly determined that the respondent is removable as charged.† *See* section 240(c)(3)(4) of the Act.

As the respondent has no qualifying relative for purpose of cancellation of removal under section 240A(b) of the Act, the Immigration Judge properly pretermitted his application for this relief.

The respondent's constitutional/fair hearing-arguments are meritless. We have no jurisdiction to review the decision of the Department of Homeland Security (the "DHS," formally the Immigration and Nationalization Service) to exercise its prosecutorial discretion to institute removal proceedings. *See, e.g., Matter of Bahta,* 22 I&N Dec. 1381 (BIA 2000). Neither this Board nor Immigration Judge has authority to equitably estop the DHS from undertaking a lawful course of action that it is empowered to pursue by statute and regulation. *Matter of Hernandez-Puente,* 20 I&N Dec. 335, 338 (BIA 1991) The respondent failed to assert any Fifth Amendment right not to testify at the hearing, thus he may not do so now. His testimony may properly be considered. *See Matter of Edwards,* 20 I&N

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* The respondent has reportedly lost a legal challenge to his dis-enrollment at the state court trial level, even though it has been indicated he appealed that decision.

† The respondent has not provided actual evidence that the Notice to Appeal (Form I-862, Exh. 1) is somehow defective.

Dec. 191, 196, n.4 (BIA 1990) Moreover, his relevant testimony concerning his visa status doe not implicate criminal prosecution and so it does not relate to self-incrimination. *See Wall v. INS,* 722 F.2d 1442 (9th Cir. 1984). Notwithstanding the respondent's appellate contention to the contrary, he was given an adequate opportunity to cross-examine witnesses at his merits hearing. *See* Tr. At 83-99, 101-111. At the close of the witnesses' respective testimony, the respondent did not request to have additional questions asked, nor has the respondent indicated on appeal what additional information-materially related to his removal-he would seek. We find that the respondent was provided a full and fair hearing. *See* section 240(b)(4)(B) of the Act; *see also Matter of Santos,* 19 I&N Dec. 105 (BIA 1984). We deny the respondent's motions for additional development or to strike the DHS's appellate brief, as these requests are meritless.

While we find no error in the Immigration Judge's grant of voluntary departure to the respondent, he has objected on appeal to being provided that form of relief. See Respondent's Brief at 20, 22, 44-45. We construe this as a withdrawal, with prejudice, of any request for voluntary departure.

FURTHER ORDER: The Immigration Judge's order removing the respondent to Thailand is affirmed, except for the portion which granted the respondent voluntary departure.

s/ Neil P. Miller
FOR THE BOARD

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON

In re: BENJAPON SAKKARAPOPE, Respondent.	Date: April 23, 2004 File Number: A72-571-155 IN REMOVAL PROCEEDINGS

Category: Alien admitted to U.S., but subject to removal.
Charge: 237(a)(1)(C)(i), I&N Act –Failed to maintain or comply with conditions of nonimmigrant status under which admitted.
Application: Termination of Proceedings and Cancellation of Removal under INA § 240A(b)(2)

ON BEHALF OF RESPONDENT Benjapon Sakkarapope, Pro se 430 NE Oak #2 Pullman, WA 99163	ON BEHALF OF DHS: Gregory E. Fehlings Assistant Chief Counsel, ICE 1000 Second Avenue, Suite 2900 Seattle, WA 98104

WRITTEN DECISION AND ORDER OF THE IMMIGRATION JUDGE

Background

This case began on September 16, 2003, when the Immigration and Customs Enforcement, on behalf of the Department of Homeland Security (Government), placed the Respondent in proceedings by filing the Notice to Appear. Exhibit 1. The Respondent is a 45 year old married male, a native and citizen of Thailand.

At a master calendar hearing on December 15, 2003, the Respondent was advised of his right to have an attorney

represent him. He declined a continuance for that purpose and chose to represent himself. He was advised of his rights to examine the government's evidence, object to evidence, provide his own evidence. He was further advised he could present witness and cross examine any witnesses presented by the government.

The Respondent admitted all allegations except that he denied allegation 4, i.e., he denied he "did not carry a full course of study from Spring 2003, semester to the present, beginning on or about January 10, 2003." The Respondent also denied the charge of removability.

The Exhibits of the records of proceedings include:
Exhibit 1 Notice to Appear issued September 16, 2003
Exhibit 2 Records Deportable/Inadmissible Alien (I-213)
Exhibit 3 Notice of Filing Certified Records and attachments as described in Index of Records
Exhibit 4 Deposition Upon Written Questions
Exhibit 5 Deposition Upon Written Questions
Exhibit 6 Application for Issuance of Subopena, Taking Deposition and Setting a Prehearing Conference
Exhibit 7 Not used
Exhibit 8 Defense and Motion for Cancellation of Removal and Adjustment of Status
Exhibit 9 Application for Cancellation of Removal and Adjustment of Status (EOIR 42B)
Exhibit 10 Table of Contents of Document Filed
Exhibit 11 Order dated April 6, 2004
Exhibit 12 Government's Prehearing Statement
Exhibit 13 Objections to Government Prehearing Statement and Evidences
Exhibit 14 Certification of Records and attachments as described in Index of Records

The Respondent did not apply for, nor did no appear eligible for adjustment of status, asylum, withholding of removal, or relief under the Convention Against Torture. Instead, the Respondent contends he is in compliance with the conditions of his non-immigrant status. The other form of

relief he is seeking is cancellation of removal under 240A(b)(2) as a person abused by a spouse or parent who is a lawful permanent resident or United States citizen. He was also considered for voluntary departure.

Summary of Evidence

The Government called two witness in this case and the Respondent called one additional witness. The Government's first witness was the Respondent, Benjapon Sakkarapope.

The Respondent testified he is a native and citizen of Thailand. He admitted that he has never been a citizen or national of the United States. He possesses a valid Thai passport.

The Respondent entered the United States more than one time. One of those times was on January 16, 2002. He entered at Seattle, Washington. When he came to the United States in 2002, he entered as a student, with an F-1 visa. He came to attend school at Washington State University in Pullman, Washington. The Respondent explained that his last entry into the United States occurred in October 22. He left for Thailand on September 11, 2002, and stayed about a month. When he returned, he returned using his F-1 student visa.

He testified that in Thailand, prior to coming to the United States, he had obtained a bachelor's degree and two masters' degrees from three different Thai universities. He was awarded his bachelor's degree from Chiang Mai University in 1981. His first master's degree was received at Kasertsart University in 1986. His second master's degree was awarded by Silpakorn University two or three years later, in 1989.

The Respondent testified that he first came to the United States in 1991 as an exchange scholar with a J visa. He returned to the United States in 1992 as a student with the F-1 visa. He attended Washington State University, but had problems there. When he first arrived he was enrolled in an

American Intensive English program. He was in that program for one semester. This program does not lead to a degree.

He was enrolled in the department of business administration at Washington State University between 1992 and 1995. He testified that he was forced to leave that program and enrolled in a different program. An office mate, Greg Brack, made allegations against him that the Respondent planned to make a bomb. Brack said he witnesses the Respondent making a threat to bomb a campus building. Police picked up the Respondent and held him for three or four hours. He asked for a lawyer and one was provided. The attorney's last name was Robinson and he practices in Pullman, Washington. He did not remember his first name or his office location. This attorney is now the court commissioner. The Respondent contends he never went to court or was charged with planning to make a bomb.

As a result of the bomb threat incident, he had to change his program. The Respondent testified he is still in the Ph.D program. He transferred to another program, i.e., economics. Business administration and economics are located in the same building. Greg Brack said he threatened to bomb Todd Hall, which is the building where the business administration and economics department are located. After this incident, they withheld his registration. He then testified that he transferred to an economics program. It was not clear how switching to an economics program solved the bomb threat issue.

The Respondent was asked if he ever attended any schools other than Washington State University. He stated he took a correspondence course in either 1995 or 1996. This course was offered through a correspondence school, the Southern California University for Professional Studies. He obtained a Ph.D. in Business Administration through this school. He obtained the degree by correspondence. He believes the school is certified by the State of California. He is not sure whether it has any national accreditation.

The Respondent enrolled in the economics program at Washington State University in 1995 and obtained a master's degree in economics in 1997.

The Respondent denied he had been accused of stalking a woman. He was not aware of any no-contact orders or protection orders against him. He testified that the police advised him not to contact faculty members. The attorney advised him to agree and solve the problem through university channels.

After he got his economics master's degree in 1997, he enrolled in another program. At that time, he applied to a Ph.D. program in agricultural economics. He has not obtained a Ph.D. The chairman who admitted him to the program retired the same summer. The acting chair did not want to admit him to the program. The department chair wanted the Respondent to take the exams to enter the program. There were two exams but he only passed on exam. The chair told him to pass one or both. After the department chair retired that summer, Paul Barkley was the acting chair. They sent him a memo and he talked to somebody. He forced the Respondent to leave the program the first semester. He took the qualifying exam that first year of the program. He did not pass the exams.

When asked if he is currently enrolled in a program at Washington State University, he responded they will not allow him to enroll. He received a letter dated January 31, 2003, from Dean Howard Grimes. This is part of Exhibit 12, page 4. He believes this letter is invalid. He says Dean Grimes does not have authority to drop him from the program. He says the department advisor has to recommend that he be dropped. He did not receive anything from the department advisor. The advisor had to make a recommendation to the department and then the department recommends to Dean Grimes to drop him.

The Respondent claimed to have proof that his advisor did not recommend him be disenrolled. He referred to Exhibit 8, Attachment 11, page 16. It says "Ben" (the

Respondent" passed the six year limit for completing his degree. The Respondent stated that is wrong, there is no time limit. From the hand writing, the author is Mr. Rob Cassleman, the International Student advisor. He is the student advisor for every international student. The Respondent doe not have a specific advisor. The Respondent's advisor in economics was Hao Zhang. He is the chair for the master's program in statistics. He has emails from his advisor.

When he says "appeal", that refers to his appeal for the Ph.D. Program. The last appeal is on February 2003 to the Board of Regents. He has been out of the program since 2003. He was dropped, effective January 10, 2003. He registered and paid tuition. He was dropped according to the letter dated January 21, 2003 and it was retroactive to January 10, 2003. The Respondent stated that is the question in the court right now.

He filed a lawsuit in state court because he has been dis-enrolled. He has not been allowed to enroll since January 2003. He is complaining about that. He filed a lawsuit in Superior Court of Washington for Whitman County. Exhibit 12, page 6. The Superior Court dismissed his lawsuit on March 5, 2004. He has taken an appeal of this order. On page 7 of Exhibit 12, it states Washington State University Graduate School requires all students to complete master's degree within six years of the earliest credits used to satisfied the degree requirements. In 2003, he was pursuing the master's degree in Statistics. He does not have to take any course anymore. He was auditing classes.

He is not currently attending school anywhere. He is not employed anywhere. His wife is supporting him. She is a Thai citizen. She is not a United States citizen or is she a Lawful permanent resident.

Testimony of Howard grimes

The witness, Howard Grimes, is the dean of the Graduate School at Washington State University. He is dean of all the graduate programs and the professional programs.

He was referred to his letter dated January 31, 2003. The Respondent earlier characterized this letter as one which dis-enrolls him from the Washington State University. The Respondent acknowledged the witness has the authority to dis-enroll him but that the dean is required to receive a recommendation from his advisor. Dean Grimes agreed that the letter notified the Respondent he was dis-enrolled at the university. He is not required to obtain a recommendation from the Respondent's advisor.

The Respondent also contends that there is no requirement that a program be completed within six years. Dean Grimes states there is a university requirement that a master's degree program be completed within six years of the first credits taken toward the degree. The Respondent was enrolled in a master of science statistics program. At the time he was disenrolled from the statistics program, he was not entitled to pursuer any other courses of study at the university. He stated the Respondent started in 1993 as a PhD in business administration. He was not making progress in that progr5am so he transferred to another program. The Respondent failed his qualifying exam and was given a second opportunity to take the exam. The witness testified the Respondent is a nice guy and the faculty tried to keep finding ways to work with him. The graduate school placed him in the interdisciplinary program. He took the exam in February 2002. He also miserably failed to pass that exam. It was a unanimous decision by the faculty, which is practically unheard of.

The witness said the Respondent then started a series of appeals. These appeals go before a faculty panel. The Respondent lost his appeals. Students have another second line of appeals. An independent faculty panel is put together and these are faculty members who do not know the student.

This second independent faculty panel also denied the Respondent's appeals.

Regarding the length of time the Respondent was in the program, the Graduate School has 3,000 students so they sometimes do not notice when a student is there beyond the time. However, the Respondent presented himself regularly with various questions. His academic folder kept appearing, and it was during one of those times it was noticed that he was over the time. He was also under-enrolled. Students are required to carry a minimum number of hours. International students are required to carry a minimum of ten credit hours in order to maintain their status. The Respondent was carrying less than ten hours. He was notified that he had exceeded the time and also that he was under-enrolled, i.,e., taking too few credit hours. He was dis-enrolled in the fall of 2002. The Respondent was given a rather extraordinary extension. This was this warning to be successful. The witness said that all the Respondent's course work had been done for years. There was nothing to be gained from him being in non-content courses.

He was dis-enrolled in 2002 and there was an appeal. The Dean granted the appeal and extended it beyond that semester. When the Respondent did not finish his course work by the date set, he received his final dis-enrollment, effective January 10, 2003. So, in 2002, he had both exceeded the six year limit for obtaining his degree in statistics, and he was taking less than the minimum number of credits for maintaining enrollment.

There is also a letter dated July 21, 2003, from the witness. It states that the Respondent has exhausted every appeal available to him. It states finally that the Respondent is not a student at Washington State University and there is no further appeal process for him.

The Respondent asked the witness if he intentionally issued the memoranda on November 25, 2002, December 18, 2002 and January 31, 2003. The witness answered yes. In answer to the Respondent's question if the witness issued

these memoranda in retaliation for the Respondent's appeals, the witness gave a resounding no.

Testimony of Mary Furnari

The witness, Mary Furnari, is Associate Director, International Student Advisor. The Respondent asked her questions listed in his Deposition Upon Written Questions. Exhibit 5, page 7 through 9. She was asked about the bases for her statements in a June 9, 2003, email to Daniel C. Hanson. Ms. Furnari's email statement were based upon the fact that the Respondent was no longer enrolled in the graduate program at Washington State University and no longer eligible to continue at Washington State University. She had a number of questions about the new procedures which were being introduced as a result of the SEVIS program. She stated she provided the Respondent with copies of his records as required by the Public Records Act. She indicated that approximately 200 SEVIS ID were created without the students requesting them. The school had been given a strict deadline for having all international students in the database and they were trying to comply with that deadline. Therefore, they created SEVIS records for some students who had not submitted requests.

Statement of the Respondent

The Respondent was asked if he wished to make a statement. He said he has a complicate story. He asked that the Court look to his pleadings rather than an oral statement*.

The Respondent was asked questions regarding his ability to voluntarily depart the United States and his willingness to do so if he is ordered to leave the United States. He equivocated, at first, then agreed that he would

* At the beginning of the hearing, I asked the Respondent if anyone helped him in preparing the pleadings or the application in this case. He was adamant that he prepared all the pleadings and application himself and that no one helped him. I note that the pleadings in this case appear to be the work of a person with some legal training.

obey the Court's order when his immigration appeals have been exhausted. The Respondent was given the warnings regarding a failure to voluntary depart by the date set in a final order. He stated he understood that he would no longer be eligible for voluntary departure, cancellation of removal, adjustment of status or change of status if he failed to voluntarily depart by the date set in the final order.

Analysis of Law and Fact

The Respondent was admitted to the United States as a non-immigrant under a visa program designed for foreign students. His status was designated F-1. The pertinent definition of non-immigrant is found at Section 101(a)(15)(F). That section states an alien is not an immigrant who has

> ...a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study consistent with section 214(I)* at an established college, university,...or other academic institution or in a language training program in the United States, particularly designated by him and approved by the Attorney General...

Every non-immigrant must establish that he is admissible to the United States, or that any ground of inadmissibility has been waived. 8 C.F.R. § 214.1(a)(3). The alien must have a valid passport and a valid visa. The alien must agree to abide by the terms and conditions of his admission and must depart the United States at the expiration

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* Footnote 141 at Section 214(m) indicates there were previously two sections, each lettered as (I). The now-lettered Subsection 214(m) is the provision dealing with restrictions on foreign students attending certain types of schools and is applicable here, notwithstanding the above-mentioned reference to the contrary.

of the authorized period or upon abandonment of his authorized non-immigrant status. 8 C.F.R. § 214.1(a)(3).

The requirements for status as a non-immigrant student are set forth in 8 C.F.R. § 212.2(1). The alien must have a SEVIS (Student and Exchange Visitor Information System) form I-20 in his own name issued by an approved school. He must also have documentary evidence of financial support.

The alien's F-1 status continues during the time he is pursing a full course of study at an approved institution. The alien is considered to be maintaining status if he is making normal progress toward completing a course of study. 8 C.F.R. § 214(f)(5). A reduced course load may be authorized by the designated school official (DSO) for academic difficulties or for medical conditions.

An F-1 student who is admitted for duration of status is not required to apply for an extension of stay as long as the student is maintaining status and making normal progress toward completing his educational objective. 8 C.F.R. § 214.2(f)(7). A student who is maintaining status and making normal progress, but who is unable to complete the objective by the program end date on the Form I-20, must apply for an extension prior to the end date. *Id. See also, Matter of Mehta,* 14 I&N Dec. 451 (BIA 1973).

The Respondent in this case attempted to pursue degree programs in three or four areas: business administration, economics, agricultural economics and statistics. He obtained one master's degree but was unsuccessful qualifying for the PhD program thereafter. He enrolled in a master's program in statistics and he was not making normal progress. He was under-enrolled and he testified that he sometimes audited course for the purpose of maintaining immigration status.

All the Respondent needed to do to maintain his student status was pursue a legitimate academic course load and make normal progress. He failed to do so. He is not now a student in any school in the United States. He has

exhausted his administrative appeals. He filed am appeal to the Superior Court of Washington and that appeal was dismissed on summary judgment. The Respondent has taken an appeal from that decision to the Washington Court of Appeals. In addition, he has filed an action in the U.S. District Court against the Board of Regents, Washington State University and the Secretary of U.S. Department of Education. This Respondent has found a new way to remain in the United States without being a student and that is to be a litigant. His collateral attacks on the actions of the university do not change the fact that the Respondent has failed to make normal progress toward a degree and he is out of status.

Despite the Respondent's shotgun approach, there is a final agency decision regarding this student status. The Respondent requested a stay of the Superior Court decision while he pursued his appeals and this stay was denied. Exhibit 14, page 11. He is not enrolled in Washington State University and not entitled to be a student there.

Conclusion

Based upon the evidence presented, I find removability has been established by clear and convincing evidence. The Respondent is not eligible for cancellation of removal as the battered spouse or child of a lawful permanent residence of United States citizen. Neither his spouse nor his parents are residents or citizens of the United States. In fact, they live in Thailand, not in the United States.

The only other application made by the Respondent is for voluntary departure. It appears that voluntary departure is the only relief for which he is eligible. He meets the requirements as set forth in Section 240B(b) of the I&N Act and that relief will be granted.

Therefore, the following orders shall be entered:

ORDER

It IS ORDERED that the Respondent's motion to terminate is herby denied.

IT IS FURTHER ORDRED that the Respondent's application for cancellation of removal as a battered spouse or child is pretermitted.

IT IS FURTHER ORDRED that the Respondent be granted the privilege of voluntarily departing the United States, without expense to the government, on or before June 22, 2004. This grant of voluntary departure is conditioned upon the Respondent's depositing with the Department of Homeland Security within five business days of this Court's decision the sum of $500 or a bond in the amount of $500 to secure his voluntary departure.

IT IS FURTHER ORDRED that if the Respondent should not timely makes such a deposit or should otherwise fail to obey this Court's order to depart the United States voluntarily on or before June 22, 2004, the privilege of voluntary departure shall be withdrawn, without further notice of proceedings, and the Respondent shall be removed from the United States to Thailand on the charges contained in the Notice to Appear.

IT IS FURTHER ORDRED that if the Respondent should not depart the United States voluntarily on or before June 22, 2004, he shall be subject to a civil penalty of not less than $1,000 nor more than $5,000, and will be ineligible for a period of ten years for any further relief under Sections 240A, 240B, 245, 248 and 249 of the Immigration and Nationality Act, i.e., he will be ineligible for voluntary departure, cancellation of removal, adjustment of status, change of non-immigrant classification or recordation of admission of permanent residence.

DATE: April 23, 2004.

s/ Victoria Young
VICTORIA YOUNG
U.S. Immigration Judge

FILED
FEB 1 2005
SUPREME COURT OF
WASHINGTON

THE SUPREME COURT OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	**ORDER** No. 76027-6 C/A No. 22708-1-III, 22881-7-III & 22732-4-III (consolidated) Whitman County No. 03-2-00168-4

Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers and Fairhurst, considered this matter at its February 1, 2005, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied.

DATED at Olympia, Washington this 1st day of February, 2005.

For the Court
s/ Gerry L. Alexander
CHIEF JUSTICE

FILED
NOV 23 2004
SUPREME COURT OF
WASHINGTON

THE SUPREME COURT OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 76027-6 RULING DENYING EXTENSION OF TIME

Benjapon Sakkarapope sought judicial review of his academic dismissal first from a doctoral program and then from a master of science program at Washington State University. The superior court denied relief by an order entered March 5, 2004. Mr. Sakkarapope has appealed that order to the Court of Appeals. Meanwhile, both the trial court and the Court of Appeals have denied a series of various-styled requests by Mr. Sakkarapope for relief pending a decision on that appeal. Mr. Sakkarapope now moved for discretionary review of an August 20, 2004, Court of Appeals order addressing and denying such a request.* Because the Deputy Clerk advised Mr. Sakkarapope that the motion for discretionary review was not timely filed, Mr. Sakkarapope also moves for an extension of time. In addition, he moves to strike the University's answer to his motion for discretionary review.

* The court's order in part denied Mr. Sakkarapope's motion to modify a May 7, 2004, commissioner's ruling. That ruling in turn declined to disturb a superior court order dated March 19, 2004, denying Mr. Sakkarapope's motion to "stay enforcement" of that court's decision. Mr. Sakkarapope complaints about each of these decisions.

In his motion for an extension of time, Mr. Sakkarapope first urges that his motion for discretionary review was not in fact untimely. He is mistaken. The Court of Appeals order was not subject to reconsideration, so his "motion for clarification" did not operate to extend the time to move for discretionary review. RAP 12.4(a);13.5(a). And it is the date of receipt by the court, not the date of mailing, that determines timeliness. RAP 18.6(c). Mr. Sakkarapope thus need an extension of time. This means he must show extraordinary circumstances and that an extension is necessary to prevent a gross miscarriage of justice. RAP 18.8(b).

Mr. Sakkarapope does not make the requisite showing. As to the extraordinary circumstances requirement, either a misunderstanding of applicable court rules nor an unintended failure to comply with those rules qualifies as an unusual or unavoidable event. As to the miscarriage of justice requirement, it is not clear how a "stay of enforcement" of the trial court's decision would have any practical effect on Mr. Sakkarapope's situation. What Mr. Sakkarapope really seems to want is some sort of interim injunctive relief. But he has not established a sufficient ground for either the Court of Appeals or this court to afford such relief pending review under RAP 8.3.

The motion for extension of time is accordingly denied. This makes it unnecessary to separately address Mr. Sakkarapope's motion for discretionary review or his motion to strike the answer to that motion.

s/ Geoffrey Crooks
COMMSSIONER

November 23, 2004

FILED
AUG 20 2004
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 22708-1-III cons/w No. 22881-7-III and No. 22732-4-III ORDER GRANTING MOTION FOR EXTENSION OF TIME TO FILE RESPONSE AND ORDER DENYING MOTION TO MODIFY COMISSIONER'S RULING

THE COURT having considered appellant's motion to modify the Commissioner's Ruling under date of Mat 7, 2004, motion for injunctive relief and declaratory judgment, motion to consolidate and amend motion to modify include motion for injunctive relief and declaratory judgment and reply, and the respondent's answer thereto and request for an extension to file a response, NOW THEREFORE,

IT IS ORDERED, the motion for extension of time to file a response is granted and the motion to modify the Commissioner's Ruling of May 7, 2004 is hereby denied.

IT IS FURHTER ORDERED the motion for injunctive relief and declaratory judgment, motion to consolidate and amend motion to modify to include motion for injunctive relief and declaratory judgment are hereby denied.

DATED: August 20, 2004

FOR THE COURT:

s/ Kenneth H. Kato
KENNETH H. KATO
CHIEF JUDGE

FILED
MAY 7 2004
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	COMMISSIONER'S RULING No. 22708-1-III cons/w 22881-7-III and 22732-4-III

Having considered Mr. Sakkarapope's motion for stay of enforcement of the trial court decision, motion to strike the declaration, motion to strike Respondent's pleading, the State's counter motion to strike a declaration, the replies thereto to these various motions, the record, file, and oral argument of Mr. Sakkarapope and counsel for the State, and being of the opinion that Mr. Sakkarapope has failed tocite any authority to support his motion, nor does he meet the criteria of RAP 8.1(b)(3) for a stay of enforcement of the trial court order being appealed; now, therefore,

IT IS ORDERED, the motion for stay is denied. In light of this decision, no action need to taken on the other companion motions and counter motions pending and considered at the same time as this motion for stay.

May 7, 2004.

s/ Joyce J. McCown
COMMISSIONER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 ORDER DENYING OF A STAY OF PROCEEDING TO ENFORCE A JUDGMENT

This matter came before the undersigned, ex parte, on the motion of the petitioner for granting a stay of proceedings to enforce a judgment pursuant to CR 60(c) and 62. The court having considered the motion and the declaration being fully advised, it finds that the cited court rules do not support the relief requested or that this is not type of issue that can be decided on an ex parte basis.

ORDERED as follows:

1. The notion is denied;
2. The Order Granting Respondent's Motion for Summary Judgment entered on March 5, 2004, is a final decision of this court.

DATED this 19th day of March, 2004.

s/ David Frazier
JUDGE

FILED
OCT 10 2006
SUPREME COURT OF
WASHINGTON

THE SUPREME COURT OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	NO. 79007-8 **ORDER** C/A No. 24892-5-III Whitman County No. 03-2-00168-4

Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers and Fairhurst, considered this matter at its October 10, 2006, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling is denied. The Petitioner's request for refund of the $250.00 filing fee is also denied.

DATED at Olympia, Washington this 10th day of October, 2006.

For the Court
s/ Gerry L. Alexander
CHIEF JUSTICE

FILED
AUG 24 2006
SUPREME COURT OF
WASHINGTON

THE SUPREME COURT OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 79007-8 RULING DENYING REVIEW

Benjapon Sakkarapope appealed a March 5, 2004, order of the Whitman County Superior Court to Division Three of the Court of Appeals. The Court of Appeals affirmed the superior court. Mr. Sakkarapope filed a petition for review. That petition is presently scheduled for consideration by a department of this court on October 10. 2006. Meanwhile, Mr. Sakkarapope also filed in the superior court a motion for vacation of judgment and to recuse the judge. The superior court, seemingly reasoning that it was without jurisdiction until the appeal was mandate and concluding that Mr. Sakkarapope's motion was frivolous, awarded attorney fees to defendants/respondents as a CR 11 sanction.

Mr. Sakkarapope them moved for discretionary review by the Court of Appeals of that January 6, 2006, Order for Sanctions. The Court of Appeals stayed consideration of that motion pending this court's decision on Mr. Sakkarapope's petition for review in the underlying case. Mr. sakkarapope now moves for discretionary review by this court of that Court of Appeals stay. He also asks that this motion be consolidated with the pending petition.

Mr. Sakkarapope spends most of his motion arguing his views of the merits of the Court of Appeals decision in his appeal and attacking the competence of the trial judge and counsel for defendants/respondents. But the only decision the Court of Appeals has thus made in this case is to stay it. That is altogether sensible, given that many of Mr. Sakkarapope's arguments are already before this court in his petition. Mr. Sakkarapope fails to persuasively explain what a separate new Court of Appeals review could accomplish at this point. And he also fails to demonstrate how judicial efficiency would be served by consolidating this stayed matter with the petition for review.

The motion for discretionary review is denied.

s/ Geoffrey Crooks
COMMSSIONER

August 24, 2006

FILED
JUL 25 2006
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 24892-5-II ORDER DENYING MOTION TO MODIFY COMISSIONER'S RULING

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of May 2, 2006, and is of the opinion the motion should be denied. Therefore,

IT IS ORDERED, the motion to modify the Commission's Ruling is hereby denied.

DATED: July 25, 2006

FOR THE COURT:

s/ Dennis J. Sweeney
DENNIS J. SWEENEY
CHIEF JUDGE

FILED
MAY 2 2006
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION III

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	COMMISSIONER'S RULING No. 24892-5-III

Having considered Mr. Sakkarapope's Motion for Discretionary Review, the records and file, this matter is stayed pending the Washington State Supreme Court's decision and mandate on Mr. Sakkarapope's Petition for Review in Supreme Court Cause Number 78334-9 currently pending that Court.

May 2, 2006.

s/ Joyce J. McCown
COMMISSIONER

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 ORDER FOR SANCTIONS

This matter came before the Court on Sakkarapope's Motion To Fix Time and Place of the Hearing Re: Motion For Vacation Of Judgment And A Recusal Of Judge.

The Court heard the oral argument of Benjapon Sakkarapope and counsel for the Respondents, considered the pleadings filed in this action, and considered the Whitman County record in this action. Based on the argument of the parties and the records in this matter, the Court finds:

FINDINGS

1. On March 5, 2004, this Court entered an order of summary judgment in favor of the Respondents in this case. On March 5, 2004, Mr. Sakkarapope filed a notice of appeal of that order. This Court has received no mandate or order from the Court of Appeals regarding Mr. Sakkarapope's appeals, and this office is award of no such mandate.

2. On October 7, 2005, Mr. Sakkarapope filed a Motion To Fix Time and Place of the Hearing Re: Motion For Vacation Of Judgment And A Recusal Of Judge. That pleading was not in conformity with the requirements of CR 11 in that the motion is frivolous and was filed with the intent to harass the Respondents. With reasonable inquiry, Mr. Sakkarapope would know that this Court does not presently have jurisdiction to hear this motion.

3. The Respondent incurred the reasonable attorney fees of $1,377.50 in responding to this motion and appearing for the hearing on the motion.

Based on the above, the Court entered the following:

ORDER

Benjapon Sakkarapope shall pay Washington State University its reasonable attorney fees incurred in responding to Mr. Sakkarapope's Motion To Fix Time and Place of the Hearing Re: Motion For Vacation Of Judgment And A Recusal Of Judge, in the amount of $1,377.50.

DATED this 6th day of January, 2005.

s/ David Frazier
JUDGE

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 SUBPOENA DUCES TECUM

The State of Washington to:

THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY
Address: 139 French Administration Building, Room 422, Stadium Way, Pullman, WA 99164

You are commanded to transmit the following documents to the Court:

1. The records and related documents of the adjudication of rights and responsibilities conducted by the CGSRR (Drs. Howard Grimes, Sally Blank and James Harsh):

(a) The original documents of which Mr. Benjapon Sakkarapope submitted to each member of the CGSRR on September 1, 2000 (three sets of the documents; one for each member of the CGSRR).

(b) ALL other handwritten notes made by all individual members of the CGSRR at the meeting dated September 1, 2000, where the handwritten notes were not made on the original documents of which Mr. Benjapon Sakkarapope submitted to each member of the CGSRR on September 1, 2000.

(c) All records and related documents of any interviews, investigation, reviews, deliberation and/or meetings conducted by Drs. Howard Grimes, Sally

Blank, and/or James Harsh in the capacity of the CGSRR as to form the decision of September 19, 2000.

2. All records of communications (verbal, written or email or other forms of actions) between Dr. Richard Shumway and faculty members who have custody of the requested records, and Public Records Officer responsive to the Mr. Sakkarapope's record requests of July 6 and November 12, 2002.

3. All records and related documents of the 1997 doctoral qualifying examination (May-June) and the 1998 doctoral quantitative methods qualifying examination (May-June), Agricultural Economics Department. For the 1997 examination, the records include both Economic Theory and Quantitative Methods qualifying examinations. The records include, but not limit to, the following:

(a) Exam questions and answer keys.

(b) Individual students' written answers with evaluative comments and grades for each question. The records include all individual students who took the exams and all evaluative comments/grades by all panel evaluators as well as all Exam Performance of individual students. Any personal identification of the other students may be removed.

(c) Academic criteria, rules and procedure of determining an overall passing or failing grade.

(d) Records of the examination committee's meetings and decisions in regard to the doctoral qualifying examinations.

4. All records and related documents of evidence, opinions and recommendations obtained and/or used by Dr. Richard Shumway as the basis of his decision of August 10, 1998. The records also include all communications between Dr. Shumway and faculty members in regard to the appeal of July 22,1998.

5. All records and related documents of evidence, opinions and recommendations obtained and/or used by Dr. Paul

Barkley (Interim Chair) in regard to his decision of Mr. Sakkarapope's admission to the doctoral program of the department during June-August 1997.

6. All records and related documents of the 2000 IIDP preliminary written examination—questions (January 12 and 14, 2000), student answers with evaluative comments, answer keys, evaluation criteria, and other relevant documents, administered by Drs. Kenneth Duft and Li-Ming Han, including Harry Turtle.

7. All records and related documents of the February 11, 2000, IIDP preliminary oral examination--questions, student answers with evaluative comments, answer keys, evaluation criteria, and other relevant documents, administered by the examination committee chaired by Dr. Kenneth Duft.

8. All records, observation handwritten notes and related documents of the February 11, 2000, IIDP preliminary oral examination created and administered by Dr. Alan Black in the capacity of the Graduate School's Representative.

9. As indicated in Dr. Kenneth Duft's letter (no date) responsive to Dr. Herbert Hill's email dated 5/5/2000, the records and related documents:

> (a) As indicated in the answer to Question #1, "personal copies of the text books and related materials from which all my questions were extracted."
>
> (b) As indicated in the answer to Question# 3, "several portions of the written qualifying examinations."

10. All records and related documents of any interviews, investigation, reviews, deliberation and/or meetings conducted by the Student Records Committee and/or its members in the brief adjudicative proceeding of March 27, 2002.

11. The record as indicated in the attachment of the Dr. Howard Grimes' memorandum of January 10, 2003, to the Provost that "HDG See Sheet 2."

The records and/or related documents above do not include any portions of which were already filed with the Court on September 22, 2003.

You are commanded to file the records and related documents above by 3:00PM on January 2, 2004.

DATED this 8th of December, 2003.

s/Brenda G. Clonings
By Deputy Clerk
Whitman County Superior Court Clerk

Person Requesting subpoena:
Name: Mr. Benjapon Sakkarapope, Petitioner
Address: 430 NE Oak #2, Pullman, WA 99163
Telephone Number: 509-332-8911

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondent.	NO. 03-2-00168-4 SUBPOENA DUCES TECUM

The State of Washington to:

THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY
Address: 139 French Administration Building, Room 422, Stadium Way, Pullman, WA 99164

You are commanded to transmit the following documents to the Court:

1. Records of a report from the WSU Police Department in regard to the allegation with a Disruption and Violation of Federal Law as indicated in Assistant Dean of Students Joan E. Menzies of January 26, 1995. The records shall include, but not limit to, the following:
    a. Written statements or transcript of verbal statements of the allegations made by Mr. Greg Black and other faculty/staff members of the Department of Marketing;
    b. Any documentation prepared or witnessed by Doug Robinsons, a court appointed attorney, on January 12, 1995; and
    c. A report of apartment search by WSU Police Department on January 12, 1995.
2. Records of a review of the allegation with a Disruption and Violation of Federal Law as referred to in Assistant

Dean of Students Joan E. Menzies of February 14, 1995. The records shall include, but not limit to, any records of mediation by Mr. Oliver Bangera, the President of the GPSA at that time.

3. Records of the matters in regard to Mr. Benjapon Sakkarapope while he was a graduate student in the Department of Marketing (1993-1995). The records shall include, but not limit to, the following:
    a. Documentation of any communication/transaction between Mr. Sakkarapope and Dr. James McCullough and Dr. Patriya Tansuhaj as well as other faculty and staff members;
    b. Documentation of Mr. Sakkarapope's appeals filed with the department and of reviews of the appeal matters by the Department and Associate Dean Ernie Stromsdorfer, the College of Business and Economics;
    c. Documentation of communications among Drs. James McCullough, Patriya Tansuhaj, Darrel Muehling, and Ms. Kathleen M. Bodley (Associcate Director of the International Program at that time) as well as other faculty members in regard to Mr. Sakkarapope's funding at WSU in 1994. The records shall include, but not limit to, any documentation responsive to Mr. Sakkrapope's request dated June 6, 1994, addressed to Ms. Bodley; and
    d. Mr. Sakkarapope's annual evaluations made by the Department of Marketing.
4. Records of reviews of Mr. Benjapon Sakkarapope's appeals before the University Ombudsman, Mary Gallwey, dated September 29, 1994, and subsequent appeals through this office. The records shall include, but not limit to, all correspondences and materials created, obtained and reviewed by the Ombudsman.

    Note: The original of appeal documents submitted by Mr. Sakkarapope was returned to him, in which were

not included any other materials created, obtained and used by the Ombudsman when it was returned.

5. Records an admission arrangement to the graduate program in marketing for Mr. Benjapon Sakkarapope in 1992. The records shall include, but not limit to, the following:
    a. Any written communications among Dean Thawee Dhanatrakul and Associate Dean for Academic Affairs Benjapon Sakkarapope, Dr. James McCullough and Dr. Patriya Tansuhaj as well as other WSU faculty and staffs members in regard to an admission arrangement for Mr. Sakkarapope; and
    b. An meeting minute of a student exchange program between WSU and Prince of Songkla University (PSU), Thailand. The meeting was held on May 28, 1992, at the PSU. Dr. Patriya Tanshuhaj was the WSU's representative at the meeting. The record may be either in Thai or English version made by Dr. Tansuhaj or other staffs; and
    c. Any other memorandum of understanding between WSU and PSU made in 1992, which is related to Mr. Sakkarapope's admission to a graduate program in marketing at WSU.
6. Records of the disputed matters between the Department of Marketing and Ms. Somdee Hongphisanvivat. The records shall include, but not limit to, a police report on the incident in Summer-Fall 1993.
7. Mr. Sakkarapope's medical records at WSU's Health and Wellness Services. The records shall include, but not limit to, the records of emergency unit.
8. Mr. Sakkarapope's records of counseling service at WSU's Hotline Crisis.
9. A copy of a manuscript titled, "Advertising's Effect on Brand-Switching Behavior: The Role of Top-of-Mind Brand Awareness," authored by Benjapon Sakkarapope

and Eric R. Spangenberg from Dr. Eric R. Spangenberg's annual or tenure review file in 1993-4.

The records and/or related documents above do not include any portions of which were already filed with the Court.

You are commanded to serve upon the Petitioner and file the records and related documents above by 3:00PM on January 21, 2004. The Court encourages you to serve the Petitioner earlier to allow a pro se more time to prepare his responses to the Motion for Summary Judgment for the hearing on February 6, 2004.

DATED this 12th of January, 2004.

s/Brenda G. Clonings
By Deputy Clerk
Whitman County Superior Court Clerk

Person Requesting subpoena:
Name: Mr. Benjapon Sakkarapope, Petitioner
Address: 430 NE Oak #2, Pullman, WA 99163
Telephone Number: 509-332-8911

FILED
JAN 16 2004
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE, Petitioner, vs. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	No. 03-2-00168-4 **ORDER ON OBJECTIONS TO SUBPOENA DUCES TECUM AND MOTION TO QUASH**

This matter came before the Court on Washington State Universities motion for an order quashing the subpoena issued December 8, 2003 (Subpoena), sealing the examinations transmitted January 2, 2004 until further order of the Court.

The Court heard the oral argument of the counsel for Washington State University and Petitioner Benjapon Sakkarapope, considered the pleadings filed in this action and the content of the Subpoena, the Declaration of Richard Shumway, the Declaration of Kirsten Pauli, the Declaration of Counsel, the documents and records filed January 2, 2004 and the pages of the Certified Record cited in the Declarations and pleadings.

The Court FINDS that:

(1) The Subpoena improperly reduced the time for responding to discovery from 30 to 25 days;

(2) The Subpoena is discovery related solely to Petitioner's claims regarding the Public Records Act and called for items that WSU has not released to Petitioner on his public request

for the documents dated July 6, 2003 based in part on statutory exemptions in the Public Records Act.

(3) The Subpoena required WSU to produce and file with the Court examinations and answer keys as well as information on all individuals students who took preliminary doctoral program examinations taken by the Petitioner in the Agricultural and Resource Economics program, including the students' written answers, with evaluative comments ad grades for each answer. The Subpoena did not require that the students' names be included, however, very few students took the examination and those students may be easily identifiable based on the information released.

Based on the above findings it is ORDERED:

(1) Respondent's motion is granted;

(2) The Subpoena issued December 8, 2003 *and the Subpoena issued January 12, 2004 are quashed*[*].

(3) The examinations transmitted January 2, 2004 will remain sealed until further order of the Court;

(4) Respondent need not provide to the Petitioner or file with the Court records on individual students other than Mr. Sakkarapope, examinations or answer keys until further order of the Court.

DATED this 16th day of January, 2004.

s/ David Frazier
JUDGE

[*] The italic text is originally in hand-written.

FILED
OCT 26 2006
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Appellant, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	**MANDATE** No. 22708-1-III cons/w No. 22881-7-III and No. 22732-4-III Whitman County No. 03-2-00168-4

The State of Washington to: The Superior Court of the State of Washington, in and for **Whitman** County.

This is to certify that the Opinion of the Court of Appeals of the State of Washington, Division III, filed on September 8, 2005 became the decision terminating review of this court in the above-entitled case on October 10, 2006. The cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the Opinion.

In testimony where of, I have hereunto set my hand and affixed the seal of said Court at Spokane, this 26th day of October, 2006.
s/ Renee Townsley
Clerk of the Court of Appeals,
State of Washington, Division III.

cc: Benjapon Sakkarapope
Sheryl L. Gordon
Hon. J. David Frazier

FILED
OCT 10 2006
SUPREME COURT OF
WASHINGTON

THE SUPREME COURT OF WASHINGTON

BENJAPON SAKKARAPOPE, Petitioner, v. STATE OF WASHINGTON, THE BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY, Respondents.	NO. 78334-9 **ORDER** C/A No. 22708-1-III, 22881-7-III & 22732-4-III (consolidated)

Department I of the Court, composed of Chief Justice Alexander and Justices C. Johnson, Sanders, Chambers and Fairhurst, at its October 10, 2006, Motion Calendar, considered whether review should be granted pursuant to RAP 13.4(b), and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied. The motion to cite unpublished opinions is denied.

DATED at Olympia, Washington this 10th day of October, 2006.

For the Court
s/ Gerry L. Alexander
CHIEF JUSTICE

THE SUPREME COURT
STATE OF WASHINGTON
TEMPLE OF JUSTICE
P.O.BOX 40929
OLYMPIA, WA 98504-0929
(360) 357-2077
Fax (360) 357-2102

October 27, 2006

Benjapon Sakkarapope
714 South Jefferson St.
Moscow, ID 83843

Sheryl L.ynn Gordon
Attorney Gen Office-
WSU Division
PO Box 641031
Pullman, WA 99164-1031

Renee Townsley, Clerk
Court of Appeals,
Division III
PO Box 2159
Spokane, WA 99210-
2159

Re: Supreme Court No. 78334-9 – Benjapon Sakkarapope v. State, The Board of Regents, WSU
C/A No. 22708-1-III, 22881-7-III & 22732-4-III (consol)

Clerk, Counsel & Mr. Sakkarapope:

This will acknowledge receipt on this date of the Petitioner's "MOTION FOR RECONSIDERATION." The pleading seeks reconsideration of this Court's October 10, 2006 order denying the petition for review.*

A denial of a petition for review is not subject to reconsideration. The RULES OF APPELLATE PROCEDURE (RAP) provide that a party may file a motion for reconsideration only of "a decision terminating review",

* It is noted that the Department of the Court that unanimously denied the petition for review was comprised of five of the nine justices of this Court, a majority of the Court

see RAP 12.4(a). One element of "a decision terminating review" is that it must be an opinion, order or judgment of the appellate court filed after review is accepted, see RAP 12.3(a). A denial of a petition for review is an act declining to accept review. As such, the Court's decision on the petition for review is not subject to reconsideration.

Moreover, RAP 12.5(b)(3) provides that the Court of Appeals will issues the mandate of its decision upon denial of the petition for review. Pursuant to RAP 12.7(b) the Supreme Court loses the power to change or modify a decision of the Court of Appeals upon issuance of the mandate, which occurred in this case on October 26, 2006.

Accordingly, although the pleading has been placed in the closed file, this Court can take no further action on it.

Sincerely,
s/ Ronald R. Carpenter
RONALD R. CARPENTER

RRC:jlb

FILED
JUN 08 2006
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Plaintiff-Appellant, v. BOARD OF REGENTS, WASHINGTON STATE UNIVERSITY; et al., Defendants-Appellees.	No. 04-35643 D.C. # CV-04-00074-JLQ Eastern Washington (Spokane) **ORDER**

Before: FERNANDEZ, RYMER, and BYBEE,Circuit Judges

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and the petition for rehearing en banc are denied.

No further fillings will be accepted in this closed case.

FILED
DEC 22 2006
SUPERIOR COURT
BETTY J. GOULD
THURSON COUNTY CLERK

SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

BENJAPON SAKKARAPOPE, Petitioner, v. WASHINGTON STATE UNIVERSITY Respondent.	NO. 04-2-02084-8 ORDER ON APPEAL

THIS MATTER having come on regularly before the above-entitled court on Friday, October 6, 2006, for trial on the Petitioner's appeal of the certain decision of the Personnel Appeals Board entered in PAB No. RULE-03-0008 on October 5, 2004, said appeal being taken pursuant to RCW 41.64.130, and the parties appearing again before this court for presentment on December 1, 2006; Benjapon Sakkarapope, Petitioner, appearing pro se and Washington State University, appearing by and through its attorney, Donna J. Stambaugh, Assistant Attorney General;

The Court having reviewed the records and files herein, having considered the written and oral arguments of the parties, and being otherwise fully advised in the premises; the Court being of the opinion that the Personnel Appeals Board committed an error of law in their decision when they declined to consider WSU's internal policy, Rule 60.26, regarding tracking of student employees, now, therefore, it is hereby

ORDERED that for the reasons set forth in the Court's Oral Opinion, dated October 6, 2006, a copy of which has been filed, and which the Court incorporates herein by reference, the decision of the PAB entered in this

matter on October 5, 2004, is reversed. This matter is remanded back to the Department of Personnel to determine whether WSU's Business Policies and Procedures Manual, Personnel Rule 60.26, is part of compliance by WSU with WAC 251-19-120(7), and if so, whether under the terms of Rule 60.26, Mr. Sakkarapope is a person qualified for consideration of remedial action under WAC 251-12-600, and if so, to consider whether a remedial action should be offered to Mr. Sakkarapope.

It is further ORDERED that Petitioner is granted his filing fee to the superior court, but that the remainder of Petitioner's requests for fees, costs, and sanctions are hereby denied.

DONE IN OPEN COURT December 22, 2006.

s/ Wm. Thomas McPhee
JUDGE Wm. THOMAS McPHEE

WASHINGTON STATE UNIVERSITY
Office of the Dean, Graduate School
PO Box 641030,
Pullman, WA 99164-1030

January 31, 2003

Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

On December 18, 2002, I granted an extension of the completion date for the Master of Sciences in Statistics. The extension required that you finish your project, apply for graduation and schedule the defense of your project no later than January 27, 2003. Because you did not satisfy these conditions, you have been dropped from the gradate program at Washington State University. In addition, your enrollment for this spring semester will be terminated immediately.

Sincerely,
s/ Howard Grimes
Howard D. Grimes
Interim Dean of the Graduate School

cc: Program in Statistics,
Office of International Students and Scholars

WASHINGTON STATE UNIVERSITY
Office of the Dean, Graduate School
PO Box 641030,
Pullman, WA 99164-1030

MEMORANDUM
To: Hao Zhang Asst. Prof., Statistics
From: Howard Grimes, Interim Dean s/Howard Grimes
Date: 18 December 2002
Subject: Exception to Policy for Benjapon Sakkarapope

I will grant Mr. Sakkarapope an exception to policy for Fall 2002. During this time, and prior semesters as well. Mr. Sakkarapope was underenrolled for student credit hours and thus out of status as a graduate student. This exception applies to his 702 credits for the Masters projects.

Furthermore, to facilitate his successful completion of the non-thesis Masters, I will extend the use of the Fall, 2002 credits through January 27, 2003. Prior to that that, Mr. Sakkarapope should a) finish the project, b) apply for the degree, and c) schedule the defense on or before the 27th of January. This unusual extension (coupled with the exception to policy) demonstrates the Graduate School's commitment to assisting this student in finishing the Master's degree.

There will be no further exceptions to policy or extensions granted after January 27, 2003. The combined actions of the Graduate School should allow the student more than ample time to complete this non-thesis degree.

WASHINGTON STATE UNIVERSITY
Program in Statistics
413 Neil Hall, PO Box 643144,
Pullman, WA 99164-3244

To: Dr. Howard Grimes, Dean, Graduate School
From: Hao Zhang s/ Hao Zhang
Cc: Mike Jacroux s/ Mike Jacroux

Ben Sakkarapope has completed required course work for his Masters in Statistics and its working on his project. I would like to request exception to policy for Ben to be underenrolled for the Fall semester of 2002. it is possible that Ben cannot finish the project in the fall semester and might need an extension to the Spring semester of 2003.

Please see the enclosed email from Ben that initiates the request and explain his special circumstances. The thesis committee of Ben supports this request. Should any questions arise, please call me at 335-2958

I appreciate your consideration to this request.

From: Ben Sakkarapope [mailto:bsakkara@wsunix.wsu.edu]
Sent: Thursday, December 12, 2002 11:24 PM
To: "Hao_Zhang" <"Hao Zhang"
Subject: Research project delay

Prof. Zhang,

I am writing you to ask for support and help. As I informed you, I intended to complete my research project for my MS and took a final exam in this Fall. Unfortunately, due to the death of my father-in-law that I left the school for his funeral, and some difficulties at home, I could not return soon to have enough time to finish the project as planed. Thus, I would like to postpone our schedule to this Spring instead. This will give me some more time for both my MS research project and another paper for publication (which I discussed with you before).

In addition, since I already completed all coursework in pursuing my MS degree program, I need to enroll under a normal course load for an international student. I don't have any class to take. Thus, I would like you to help me on some paper work with the Grad. School, or as you believe it is appropriate, in regard to my enrollment in this Spring 2003, including this Fall 2002 if necessary.

If you need additional information or if there is a problem in this regard, please let me know.

Thank you very much for help and support.

Ben Sakkarapope

WASHINGTON STATE UNIVERSITY
Program in Statistics
413 Neil Hall, PO Box 643144,
Pullman, WA 99164-3244

To: Benjapon Sakkarapope
From: Mike Jacroux
Date: April 23, 2002
Subject: Individual Graduate Student Status and Progress Report

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Each year, as required by the Graduate School, the Program in Statistics does a review of each graduate student enrolled in its M.S. Degree Program. This review is to make sure that you, as a graduate student, are making "normal progress" toward your intended degreed. "Normal progress" is usually considered to be taking courses at a rate which will allow you to complete all degree requirements within two years.

You should finish your M.S. Degree in Statistics by 8/02*

Satisfactory progress? Yes √ No_____

If you have any questions, please see me. Otherwise please sign and return one copy of this report to Nancy to indicate that you have received this report.

s/ Mike Jacroux	s/ B. Sakkarapope
Mike Jacroux, Director	Student Signature indicating that
Program in Statistics	this report has been received

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* This date was the original intention of Sakkarapope planning to finish his program in early Fall 2002 semester (not a program completion deadline by any rule), but it was later rescheduled as agreed upon between Sakkarapope and his academic advisor, Hao Zhang as to the change in subject of research topic and the sickness of family member, father-in-law, that Sakkarapope had planed to visit him shortly after learning the sickness in that summer. However, his father had passed away in September 2002, and Sakkarapope had to immediately return home to attend his father-in-law funeral on September 11, 2002.

RECEIVED
FEB 19, 2001
STATISTICS

WASHINGTON STATE UNIVERSITY
Program in Statistics
413 Neil Hall, PO Box 643144,
Pullman, WA 99164-3244

Memorandum

To: Karen DePauw
From: Mike Jacroux
Date: February 2, 2001
Subject: Exception to Policy for Benjapon Sakkarapope

On December 15, 2000, Benjapon Sakkarapope , ID #99041329, filed his program for the M.S. degree in Statistics with the Graduate School. However, on of the courses he included in the program was Econ511 (State 531) which he took during Spring, 1994. Thus, according to Graduate School policy, the course was one semester too old to be counted as part of his M.S. degree program. The course was taught by Wayne Joerding, who has been teaching the course every year since 1994. The content of the course has remained basically unchanged. Because the content of the course has remained essentially unchanged over the past several years and because the course was only one semester beyond the Graduate School expiration date policy, we are asking that he be allowed to count the course as part of his program. If I can supply any additional information concerning this request, please contact me.

Approved.
s/ H.H. Hill
2/12/01

RECEIVED
JAN 16 2003
PRESIDENT'S OFFICE

WASHINGTON STATE UNIVERSITY
Office of the Provost
PO Box 641046,
Pullman, WA 99164-1046

January 15, 2003

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Benjapon Sakkarapope:

I am responding to your correspondence of January 14, 2003, on behalf of President Rawlins. In your letter, you request an opportunity to pursue your academic appeals at the Board of Regents' regular meeting on January 24, 2003.

The University previously notified you that you had no further appeal rights at Washington State University. (Please see attached letter.) Pursuant to the Board's Bylaws, Article II, Section K, the University President and the President of the Board may approve public testimony regarding a special issue. However, the President and the President of the Board have denied your request to present this issue to the Board at their meeting on January 24, 2003.

Sincerely,
s/ R. C. Bates
Robert C. Bates
Provost

cc: President Rawlins, The Board of Regents

WASHINGTON STATE UNIVERSITY
Office of the Provost
PO Box 641046,
Pullman, WA 99164-1046

January 10, 2003

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

On November 6, 2002, the Provost's Office informed you of the University's final decision in your case. In two separate letters you were explicitly told that you had no further appeal rights within the University and all procedural remedies had been exhausted at the administrative level.

I have received the correspondence you forwarded to President Rawlins and the Graduate School. It is clear from your letters that you understand that all your requests have been denied. The letters of November 6, 2002, also informed you of your right to appeal the University's final decision to the Whitman County Superior Court within 30 days. It is evident by your subsequent correspondence that you understand that legal right but continue to dispute the finality of the University's final action in this matter.

The University has no obligation to provide you with any further explanation and will no longer respond to your letters related to this matter. This matter is officially closed.

Sincerely,
s/ R. C. Bates
Robert C. Bates
Provost

WASHINGTON STATE UNIVERSITY
Office of the Dean, Graduate School
PO Box 641030,
Pullman, WA 99164-1030

October 22, 2002*

Benjapon Sakkarapope has been past his completion data as a WSU graduate student since Summer, 200. He is officially out of status and he is not making adequate progress towards a graduate degree. Thus, we recommend that he not be allowed to enter the US on a student visa.

If he returns to WSU by any mechanisms, he will need to re-apply to the Graduate School for admittance.

Howard Grimes
Interim Dean

* This memorandum was later issued again on November 25, 2002, after Sakkarapope returned to the United States on October 23, 2002 from attending his father-in-law funeral. See Agency's Certified Records at 288-9

Washington State University
Office of the Provost
P.O. Box. 641046
Pullman, WA 99164-1046

November 6, 2002

Benjapon Sakkarapope
430 NE Oak Street #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

I am responding to your letters to me dated August 7 and September 9, 2002, as well as your September 10, 2002, letter to President V. Lane Rawlins. In those documents you apparently request a procedural review of your preliminary doctoral examination and the subsequent appeals of Dr. Ronald Hopkins' review of the procedural review that you were granted, as well as request that I release public records.

First, as to the doctoral examination and the appeal process: On February 1, 2001, Interim Provost Ronald Hopkins found no procedural irregularities had occurred during your preliminary examination and upheld the Graduate School's decision to disenroll you from the Interdisciplinary Doctoral Program. In a letter dated December 7, 2001, you asked the Interim Provost to reconsider his academic decision. Interim Provost Hopkins informed you on December 13, 2001, that he would not revisit your case. As a result, your University appeal rights were exhausted. I will not reopen this final decision and review this matter yet again. You have filly exhausted your review of the University's decision to drop you from enrollment in the Interdisciplinary Doctoral Program.

Second, as to your public records request: requests for public records are handled by the University's Public Records Officer. To help facilitate your request, I have given a copy of your September 9, 2002 letter to the Public Records officer. She informs me that she has responded to your request, and that she believes all administrative avenues for relief as to the public records request have been exhausted.

I am replying to your September 23 request for further review of the Student Records Committee's FERPA hearing and the FERPA hearing that occurred on march 27, 2002, by separate letter.

Sincerely,
s/ R C. Bates
Robert C. Bates.
Provost and Academic Vice President

Washington State University
Office of the Provost
P.O. Box. 641046
Pullman, WA 99164-1046

November 6, 2002

Benjapon Sakkarapope
430 NE Oak Street #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

Under The Family Educational Rights and Privacy Act (FERPA) students may request amendment of their educational records if they believe such records are inaccurate or misleading. When you raised questions regarding your educational records, the Vice President for Student Affairs officially appointed the Student Records Committee (Committee) and gave that Committee authority to consider your request. Importantly, the Committee was not authorized to review the University's academic decision to disenroll you from the doctoral program. WAC 504-21-040(3)(d) provides: "The student records committee shall not review any matter regarding the appropriateness of official academic grades." Additionally, the academic decision to disenroll you wad finalized on February 1, 2001.

As to your concerns regarding your student records, it appears that you did not directly dispute the accuracy or truthfulness of your educational record, but alleged that WSU had not disclosed certain student records to you upon request. The Committee, pursuant to WAC 504-04-010(4), held a brief adjudicative proceeding on March 27, 2002, to consider your claims. Following that hearing, it investigated your claims and was unable to locate records other than those that had already been provided to you by the Public Records Officer, the Graduate School, and the Agricultural

Economics Department*. It provided you with duplicate copies of some of those documents, and noted that you are welcome to peruse your own files at the Graduate School or the Agricultural Economics Department at any time.

I have reviewed the records related to your appeal of the FERPA hearing, including the tape of the hearing held on March 27, and the decision issued by the Student Records Committee on April 5, 2002. I find that the Committee was properly constituted and that it had authority to hear and decide your case. I find that the hearing was conducted in accordance with the procedure authorized by WAC 504-04-010(4). I also find that your educational file is accurate and complete, and affirm the Committee's decision as set forth in its letter of April 5, 2002.

This letter is the University's final decision in the matter of your student records. You have not additional rights to appeals this decision within Washington State University. You may, within thirty days of the date your receive this letter, appeal this decision to the Whitman County Superior Court in accordance with RCW 34.05.514 and 34.05.542.

Sincerely,
s/ Robert C. Bates
Robert C. Bates.
Provost and Academic Vice President

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* I understand that one additional document, a professor's personal notes upon your oral examination, we later located by the WSU Public Records Office pursuant to your public records request, and that record has been provide to you. You have not requested that document be made part of your official University file. Accordingly, it will not be made part of that file, unless you so request. Should any additional documents related to your public records requests be located, they will be provided to you by the Public Records Officer.

WASHINGTON STATE UNIVERSITY
Office of the Provost
PO Box 641046,
Pullman, WA 99164-1046

December 13, 2001

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

RE: December 7, 2001 request for reconsideration

Dear Mr. Sakkarapope:

This is in response to your request that I revisit my February 1, 2001, decision regarding your appeal from the Graduate School's Academic Decision. As I indicated in my decision letter at that time, I found no irregularity in the procedures used by the Graduate School.

Your appeal of the academic decision was not previously presented to me as a complaint against a faculty member, but your letter of December 7, 2001, refers to this matter as a complaint against a faculty member. The irregularities that you alleged faculty has committed were, however, considered as part of your appeal. They were determined to be unsupported.

It has now been almost a full year since you were notified of my final decision on your appeal. I find no reason to reconsider that decision, particularly at this late date. I agree, however, that there is one error in my February 1, 2001 letter: it referred to your program as the Individual Interdisciplinary Design Program as opposed to the Individual Interdisciplinary Doctoral Program.

As to your request for records: It is my understanding that your educational records have been provided to you by the Graduate School. If you have additional questions about

this, I encourage you to discuss the matter with Ms. Lori Lamb, WSU's public records officer.

Sincerely,
s/ Ronald H. Hopkins
Ronald H. Hopkins
Interim Provost

WASHINGTON STATE UNIVERSITY
Office of the Provost
PO Box 641046,
Pullman, WA 99164-1046

February 1, 2001

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Re: Appeal from Graduate School's Academic Decision

Dear Mr. Sakkarapope:

I have reviewed the records of your appeal from the Individual Interdisciplinary Design Program decision denying your academic advancement. These records include the CGSRR recommendation and Dr. Karen DePauw's decision. I find no irregularity in the procedures unused by the Graduate School. You were afforded due process for this review of an academic decision.

Your appeal also, on page eight, contains a request for documents under FERPA, Dean Karen DePauw will ensure that you receive copies of existing educational records. FERPA does not require that documents be created in response to a request, that the University state why it asked individual questions, or that it explain how it arrived at a decision based upon a record. To the extent you would like

such explanation, you could seek it by speaking with members of your doctoral committee.

For the foregoing reasons, I concur in the CGSRR recommendation and I affirm the decision made by Dr. DePauw. This represents the University's final decision in this matter.

Sincerely,
s/ Ronald H. Hopkins
Ronald H. Hopkins
Provost
cc: L. DePauw, T. Ursich

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

November 13, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

I have received and reviewed your letter dated November 6, 2000. As stated in the Graduate Student Code, the "recommendation will be acted upon by the Dean of the Graduate School in consultation with the Provost and the Attorney General. Appeals [of the Graduate Dean's decision' can be brought before the Provost. The Provost will consider appeals based upon procedural irregularity and will not reopen cases only for the purposes of re-investigating the grievance" (p.9).

In my letter to you dated October 10, 2000, I informed you of my decision and of the appeal process. If

you wish to appeal my decision, please do so in accordance with process articulated in the Graduate Student Code.

Sincerely,
s/ Karen DP. DePauw
Laren P. DePauw. Ph.D.
Dean & Professor
pc: R. Hopkins, Toni Ursich, Attorney General Office

WASHINGTON STATE UNIVERSITY
Office of the Dean, Graduate School
PO Box 641030,
Pullman, WA 99164-1030

October 10, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

This letter represents the final step in the procedures outlined in the section entitled "Adjudication of Rights and Responsibilities found in the Washington State University Graduate Student Code. Any further appeals can be brought before the Provost, but not only on procedural irregularity as specified on p. 9 of the Graduate Student Code.

On August 10, 2000 I informed you officially that I had referred your written appeal (dated July 12, 2000) to the Committee on Graduate Studetn Rights and Responsibilities (CGSRR). I met with the CGSRR on August 23, 2000 and they began their investigation shortly thereafter. The CGSRR submitted its report to me in a written memorandum dated September 22, 2000.

In making its decision, the CGSRR heard your appeal in person and reviewed the materials you provided to them. They also reviewed the materials contained in your official

file in the Graduate School and the "departmental" held by Herb Hill, Coordinator for the Individual Interdisciplinary Doctoral Program. The committee met with selected faculty members and administrators knowledgeable of the particulars of your case. As you will note in their report (attached), the CGSRR members found no substantive basis for reversing the decision of your advisory committee.

In a letter dated September 25, 2000, I informed you that I had received the committee's report and offered to meet with you prior to rending my final decision. I received a letter from you dated September 25th in which you requested reduced enrollment as required for appropriate immigration status. On September 27th, I approved reduced enrollment for Fall 2000 and forwarded a copy to International Programs. In response to my letter of September 25th, I received a letter from you dated September 28th. After we met in my office on October 4th, I received a follow-up letter dated October 5, 2000 to which you attached two documents summarizing "rules and violations" and "events." From our meeting, I understand that these two documents were provided to the CGSRR for their consideration. I will use the statements taken from these most recent letters and documents to address some of your concerns and allegations.

As you know, the Individual Interdisciplinary Doctoral Program is housed in the Graduate School. The Associate Dean of the Graduate School serves as the IIDP Graduate Coordinator and the Dean serves as the IIDP Department Chair. Thus, your appeal dated April 19th was referred to and handled by Dr. Herb Hill in his role as IIDP Gradate Coordinator, not Associate Dean. This was done in accordance with the appeal process outline in the Graduate Student Code that calls for review at the "department" level prior to the Graduate School. Once his review was completed, I received you appeals as Dean (rather than Department Chair due to the obvious overlap in responsibilities) and referred your appeal to the CGSRR. This clarification is needed because several of your

statements in the summary of events, summary of rules and violations, and other correspondence reflect confusion about the roles and procedures followed in your case. Although I admit that I could have encouraged the appeal to the IIDP Graduate Coordinator sooner after our meeting in February, the appeal process at the "department" level began in March and was completed in May. During this time, Dr. Hill completed a very thorough review of your case. In June, Dr. Hill agreed to a second review as you requested and rendered his final decision on June 28th. Shortly thereafter, you appealed to me as Dean and I referred the appeal to CGSRR on July 14th. Since that date, the timelines specified in the Graduate Student Code have been followed precisely. Thus, I find that your allegations about not meeting the specified timelines for Graduate School appeals are without merit. I know that the review process has been underway for some time but I do believe that all parties involved have taken their responsibilities very seriously and given your case sincere consideration.

Regarding the rules of oral examination, there seems to be some confusion about the Graduate School Policies evident in your summary of rules and violations. You have quoted information about the oral examination from the Instructions for Conducting Oral Examinations provided to the Representatives of the Graduate Studies Committee that are used to guide them in the conduct of the examination. Specifically, discussion of the candidate's performance is encouraged (and was encouraged in this case) during a closed meeting of the advisory committee. There is no length of time specified or required for this discussion. The representative of the Graduate Studies Committee receives the ballots and announces the results during this closed session. There is no requirement about the matter in which the results are reported to the student. In fact, in most cases the result is reported directly to the student by the committee chair. In your case, I find your allegation that "dismissal of the Representative and committee members was suspicious"

unfounded based on the facts. Further, members of the committee and the Representative are not required to remain after the conclusion of the oral examination.

In your documents, you quoted the following from the Graduate School Policies and Procedures (p.14): "A student who has failed two preliminary examinations may not become a candidate for the doctorate and the student's enrollment in the Graduate School will be terminated." This statement refers to the limit of a maximum, but not the minimum, of attempts to pass preliminary examinations. Also, on page 14 are the following statements:

- A student who has failed a preliminary examination does not have an automatic right to a second examination.
- In the event of a failed examination, a student may be re-examined for a second and final attempt only at the request of the department/program that previously voted to fail the student and with appropriate of the major department/program.

Thus, it is the authority and responsibility of the Graduate School to follow the procedures in regards to the policies about failed preliminary examinations. Letter of notification are sent in order to inform students of official action to be taken (e.g., my letter to you dated April 26, 2000). Thus I find that no ethical procedure has been violated in this regard.

As I informed you during meeting, Dr. Grimes' statement that you would be hearing from him regarding the committee's recommendation was based upon a misunderstanding of the appeal procedures. At the time of the statement, Dr. Grimes assumed that the results of the committee's deliberations was to be sent directly to you but, in fact, the appeal procedures clearly indicate that the recommendation of CGSRR be forwarded to the Dean of the Graduate School. I know that you "expected" to have another opportunity to "verify and clarify" discrepancies for the CGSRR. The CGSRR has the right and responsibility to structure their role in the appeal process and, in this case, it did not include the opportunity for you to verify and clarify. I

believe that the process utilized by the CGSRR provided them with sufficient background to make an informed recommendation:

In your letter to me dated October 5, 2000, you have suggested that a "fair evaluation of the preliminary examination should consist of three main elements: (a) all relevant rules, policies, and academic procedures with regard to the preliminary examination are followed, (b) the student's rights must not be violated and the expectations of the department/program, advisory, and mentors are met, and (c) the evaluation of the preliminary examination represents the scope of the program of study, which the student in pursuing, with clearly stated and justifiable academic criteria and procedures." You also stated that "the entire advisory committee was to acknowledge and perceive factual evidence associated with the examination process before evaluating the student's academic performance." These perceptions are not in keeping with our policy and procedures regarding preliminary examination. As stated in the Graduate School Policies and Procedures, the purpose of the preliminary examination is to determine the fitness of the student for pursuing a doctoral program. Regarding the conduct of the preliminary examination, the Representative of the Graduate Studies committee is present to make sure that the process is fair and complete. The members of the committee must provide their academic evaluation of the student's performance on the written and oral portions of the examination in the sum and vote accordingly. The committee members have provided sufficient justification and rationale in support of their evaluation of your performance on the preliminary examination. The Representative has also indicated that the examination was conducted in a fair and highly supportive manner.

From your documents, it is apparent to me that you take issues with the procedures followed in t \he conduct of your preliminary examination. The IIDP Handbook specifies that the "content, format and schedule for the written

examination will be determined by the student's advisory committee." There is no specification that a document be developed entitled "Proposed content and format of the preliminary examination." Thus "document" seems to be important in your appeal and of which you claim as a academic standard. Although there seems to be some lack of clarity and preciseness about the use of this "document," it does not reach a level of concern that would negate the final evaluation of the preliminary examination.

I have reviewed the relevant documents in the official files held in the Graduate School and by the Individual Interdisciplinary Doctoral Program (IIDP), the materials used in the decision made by Herb Jill as Coordinator of the Interdisciplinary Doctoral Program, the letter from the CGSRR, and the letters and documents you have sent to me. In these documents, you have articulated a number of issues and concerns and alleged violations. From your written statements, I understand that you have not been satisfied that each of your concerns have been adequately considered or addressed. Although I did not address each on of the articulated concerns, I did address some of them in this letter. I believe firmly that your concerns when taken in the aggregate still do not provide sufficient evidence to negate the decision of the IIDP Graduate Coordinator and the recommendation of the CGSRR.

In your letter of September 28th, you stated that your "solution would be to receive a pass, give me my degree, and allow me to leave WSU and Pullman to obtain my life's work." In previous correspondence (verbal and oral), you have asked that the decision of your advisory committee be reversed. In my review of your case, I find insufficient evidence to lead me to a different conclusion that that reached by the IIDP Graduate Coordinator and the CGSRR. The graduate faculty members (advisory committee members) have not only the authority but also the responsibility to provide their individual and collective academic judgment in academic matters including evaluation

of student performance during preliminary examination and continuation in doctoral studies. Their academic evaluation stands. It is my responsibility to inform you that I concur with the recommendation of the CGSRR that the failure of the preliminary examination of February 11, 2000 be upheld. Therefore, you will no longer be able to pursue a doctoral degree at Washington State University.

You can continue your studies of the Master of Sciences in Statistics. I encourage you to complete this degree in a timely fashion so that you can pursue professional career opportunities.

Benjapon, I know that this decision comes as a bitter disappointment to you. Further I know that this time has been, and will most likely continue to be, very stressful for you. There are resources available at Washington State University to assist you during this time and I hope you will avail yourself of these resources. Please contact me if I can be of assistance in securing these resources.

As I indicated above, you can appeal to the Provost but only on procedural irregularity as specified in the Graduate Student Code. Dr. Ron Hopkins, Interim Provost, can be reached through the Office of Provost, Washington State University Pullman WA 99164-1046.

Sincerely,
s/ Karen P. DePauw
Karen P. DePauw, Ph.D.
Dean

attachment
pc: R. Hopkins, Office of the Attorney General, file

RECEIVED
SEP 22 2000
THE GRADUATE SCHOOL

WASHINGTON STATE UNIVERSITY
School of Molecular Biosciences: Biochemistry, Biophysics, Cell Biotogy, Genetics, Microbiology
PO Box 644234,
Pullman, WA 99164-4234

MEMORANDUM

TO: Karen DePauw, Dean, Graduate School

FROM: Howard Grimes, Molecular Biosciences
s/ Howard Grimes
Jim Harsh, Crops and Soil Sciences
s/ Jim Harsh
Sally Blank, Kinesiology
s/ Sally E. Blank

DATE: 19 September, 2000

RE: Benjapon Sakkarapope's Appeal

Benjapon Sakkarapope has requested that his failure of the PH.D. qualifying exam, as judged by his advisory committee, be reversed to a pass. The Committee on Graduate Student Rights and Responsibilities (CGSRR) has exhaustively reviewed the basis of this appeal. After this review process, the CGSRR unanimously agrees that there is no substantial basis for reversing the decision of Mr. Sakkarapope's advisory committee.

The propose of the Ph.D. qualifying exam is to determine the competence of a given individual in the core areas of an academic discipline and to assess the student's potential to become an independent scholar. The advisory committee determined that Mr. Sakkarapope did not meet these fundamental requirements and is not prepared to enter the rigors of a Ph.D. program. It is the opinion of the CGSRR that this decision is fundamentally correct. We therefore recommend that Mr. Sakkarapope's failure of this exam be upheld.

RECEIVED
JUN 11 2002
VICE PRESIDENT
BUSINESS AFFAIRS

WASHINGTON STATE UNIVERSITY
Department of Agricultural Economics
PO Box 644234,
Pullman, WA 99164-4234

MEMORANDUM

DATE: Jan. 26, 2000

TO: Dr. Holly Wang
Dr. Phillip Wandschneider
Dr. Fred Inaba
Dr. Li-Ming Han
Dr. Hao Zhang

FROM: Ken D. Duft

SUBJECT: Status of Mr. Benjapon Sakkarapope

Over the course of the past two days I have visited several times with Dr. Karen DePauw, Dean of the WSU Graduate School and Chair of the Interdisciplinary Program. I explained to Dr. DePauw that Mr. Benjapon Sakkarapope had, in the opinion of his graduate committee, failed to perform satisfactorily in the recently-administered written qualifying examinations.

In my own department (Agricultural Economics), a graduate student's failure (twice) to pass any one of our written qualifying examinations is judged sufficient for that student's removal from our graduate program and his denied access to the oral preliminary examination. Unfortunately, the WSU Graduate School and the IDP do not recognize "written qualifying examinations" as a sufficient basis for a graduate student's removal from a program of study. The Graduate School recognizes ONLY the oral preliminary examination

as the sole basis for admission or denied access to PhD candidacy.

On the basis of the argument presented above, and in an attempt to afford Mr. Sakkarapope all the rights and privilege afforded him by our graduate program policies, Dr. DePauw has declared that our committee must provide Benjapon with the opportunity to sit for an oral preliminary exam; and his performance then be judged either unsatisfactory, OR satisfactory, and sufficient to redeem those deficiencies noted earlier in his written exams.

The Graduate School policy also stipulates that the oral examination MUST be administered within 30 days following the date of any written qualifying examinations.

Later today I will be advising Mr. Sakkarapope of his unsatisfactory performance on the written qualifying examinations and asking him to begin immediately to schedule the date for an oral preliminary examination. Tentatively, at least, that examination will be administered (in the presence of a Graduate School representative) on Feb. 11 at 10AM in Hulbert Hall, Rm 211. Formal notification of this time/date will be provided each of you by the Graduate School. Please advise me if your participation in this examination is not possible. Thank you for your continued attention to this matter.

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

August 10, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

This letter is written to inform you that I have formed a Committee on Graduate Student Rights and Responsibilities (CGSRR) to hear your appeal. The individuals named below are members of the Graduate Studies Committee (GSC):

Dr. Howard Grimes, School of Molecular Biosciences and Chair of the GSC

Dr. Sally Blank, Department of Kinesiology & Leisure Studies

Dr. James Harsh, Department of Crops & Soils Sciences

Dr. Grimes has agreed to chair the appeal committee. Within the next two weeks, I will meet with the committee to discuss the appeal process at outlined in the Graduate Student Code, to provide the committee with the pertinent materials that are available in the Graduate School, and to answer questions the committee members might have. After this initial meeting, the chair of the CGSRR will contact you regarding the process for hearing your appeal.

According to the Graduate Student Code, "the committee [CGSRR] will deliberate and render a recommendation within 60 days. The recommendation will be acted upon by the Dean of the Graduate School in consultation with the

Provost and the Attorney General" (p.8-9). I anticipate that the CGSRR will submit their recommendation to me not later than October 10, 2000.

Please be assured that we will work with International Programs regarding appropriate immigration status for you during the appeal process.

I will be out of the office until August 17th. If you have questions, please contact my administrative assistant, Booie Collins (5-6412), to arrange an appointment.

Truly,
s/ Karen P. DePauw
Karen P. DePauw. Ph.D.
Dean
pc: H. Hill, Coordinator, IIDP and Associate Dean
H. Grimes, Chair, GSC and Chair of CGSRR
S. Blank, member CGSRR
J. Harsh, member CGSRR
file

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

July 14, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

I am in receipt of your letter dated July 12, 2000 in which you request a formal appeal of the results of the your preliminary examination. I consider this request to be the first step in the formal appeal to the Dean of the Graduate School in accordance with the procedures articulated on p. 8-9 of the Graduate Student Code. As such, I will now refer this case to the Committee on Graduate Student Rights and Responsibilities (CGSRR) within 30 days of this letter.

The appeal process in which you have been engaged to date is the appeal process at the department level. The diagram on p. 10 indicates that the review process includes the Graduate Coordinator, Department Chair and the Graduate School Dean. The coordinator for he individual interdisciplinary doctoral program is the Associate Dean of the Graduate School and the Department Chair is the Dean of the Graduate School. Therefore, the appeal process must first be heard by the Coordinator, or in this case, Herb Hill, Associate Dean. After his review and decision, an appeal is to be made to the Department Chair. As Graduate Dean and Chair of the Individual Interdisciplinary Doctoral Program, it seems appropriate to bypass review as Chair and accept the appeal as Dean of the Graduate School as indicated above.

In your letter, you indicate that your "case consists of a combination of unusual academic matters and faculty conduct." In the Graduate Student Code, the "conduct" aspect of the procedures refers to student conduct issues not faculty conduct issues. I will accept your appeals as an academic issue, which does not include student misconduct, and I will request a CGSRR that includes members of the graduate faculty as indicated in the Graduate Student Code. I will confer with the chair of the Graduate Studies Committee about the composition of the CGSRR committee. You will be notified once the committee has been formed and notified of the process and timelines to be followed in the review of your case.

Truly,
s/ Karen P. DePauw
Karen P. DePauw. Ph.D.
Dean
pc: H. Hill, Coordinator, IIDP and Associate Dean
H. Grimes, Chair, GSC

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

May 4, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

This letter is written in response to your letter of May 1, 2000. Please be advised that the first letter was sent in error and a corrected letter was sent on April 27, 2000. I apologize for any confusion the first letter caused.

In your letter of May 1st you raise several points to which I will respond briefly. Yes, you were admitted to the Individual Interdisciplinary Doctoral program in March 1999 and you took preliminary examinations in January 2000. According to our records, this was the only official preliminary examination you took. The results of the preliminary examination were communicated verbally to you by Dr. Duft. The Representative of the Graduate Studies Committee is not required to inform you of the decision if the decision has been communicated to you by the committee chair.

I know that you disagree with the results and wrote a letter to me dated February 15, 2000. When we met, I encouraged you to follow the appeal process through Dr. Hill, Associate Dean and Coordinator of the Individual Interdisciplinary Doctoral Degree. I understand that the appeal process is currently underway. Please refer to the Graduate Student Code for the specifics of the appeal process (p. 8-9). Please be informed that this process provides several steps including

review by the Dean of the Graduate School and the Provost but does not include an appeal to the Board of Regents.

After the decision is made that the student has failed the preliminary examination, the committee is allowed two options: retake a second examination or terminate from doctoral program. Your committee recommended that you be terminated from the doctoral program. As a result, you received the letter dated April 27th indicating that you would be dropped from the Graduate School effective May 5, 2000.

Because you are also pursuing a masters degree in statistics, I will allow you to continue your studies towards completion of the masters degree but you will not be allowed to continue in the doctoral program pending the outcome of the appeal process.

Please continue to work with Dr. Hill in your appeal. He is considering your appeal and will be making a recommendation shortly.

Truly,
s/ Karen P. DePauw
Karen P. DePauw. Ph.D.
Dean
pc: K. Duft, H. Hill

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

CORRECTED COPY*

April 27, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

In accordance with the polices established by the Graduate Faculty at Washington State University, students who have failed the preliminary examination and are not recommended for a second examination can no longer pursue work leading to the doctorate. Accordingly, I regret to inform you that you are being dropped from Washington State University effective May 5, 2000.

Please feel free to contact me with your concerns.

Truly,
s/ Karen P. DePauw
Karen P. DePauw. Ph.D.
Dean
pc: Kenneth D. Duft, H.H. Hill

* This letter was mailed and received a week later after the original dated April 26, 2000.

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

April 26, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

In accordance with the polices established by the Graduate Faculty at Washington State University, students who have failed the preliminary examination for the second time can no longer pursue work leading to the doctorate. Accordingly, I regret to inform you that you are being dropped from Washington State University effective May 5, 2000.

Please feel free to contact me with your concerns.

Truly,
s/ Karen P. DePauw
Karen P. DePauw. Ph.D.
Dean
pc: Kenneth D. Duft, H.H. Hill

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

June 28, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

As you requested in your letter of June 9, 2000, I have reconsidered my denial of your appeal of April 19, 2000 requesting that the decision of your Ph.D. committee to fail you on your Ph.D. Preliminary Exam be reversed. You asked for a reconsideration because you felt that my interpretation and understanding of the issues as well as the relevant rules and policies do not answer the specific issues as presented in the written materials of appeal."

After re-reading your appeal of April 19, 2000, it still appears to me that you were appealing on the basis of two primary concerns: That the "rule of the prelim examination was not governed by clearly stated rules and procedures" and that "Dr. Duft mislead and inhibited the advisory committee to develop a fair evaluation of the preliminary examination." According to your proposed content and format document, "The oral examination is conducted by the entire committee and a representative of the Graduate Studies Committee. The program coordinator of the Individual Interdisciplinary Doctoral Program will also ordinarily be present. During the oral examination, the student may be asked to address any questions remaining after committee members have read the written examination, any related scholarship, and if

appropriate, the student's future research plans." In my review, I found no major infraction of the rules for the preliminary exam sufficient to cause you to fail the exam. Also, from the data that you submitted, I could find no indication that Dr. Duft misled or inhibited the committee in their evaluation of your exam. In fact, from the memos that you have provided, it appears that he tired to e quite helpful to you in preparing for your exam.

I know that this is not the result you desired and I am sorry. Ph.D. preliminary exams are quire difficult and not all people pass. Their primary purpose is to evaluate whether a student is capable of integrating knowledge and discussing concepts in a critical manner. If you still feel that you would like to pursue this appeal further, the next step is to appeal my decision to the Dean of the Graduate School.

Sincerely,
s/ H.H. Hill
Herbert H. Hill, Program Coordinator
Individual Interdisciplinary Doctoral Program and
Associate Dean of the Graduate School

WASHINGTON STATE UNIVERSITY
Office of the Dean of the Graduate School
PO Box 641030,
Pullman, WA 99164-1030

May 19, 2000

Mr. Benjapon Sakkarapope
N.E. 430 Oak, #2
Pullman, WA 99163

Dear Mr. Sakkarapope:

I have reviewed your letter of April 19, 2000 requesting that the graduate school overrule the decision of your advisory committee with respect to your preliminary exam and change your grade from a 'fail" to a "pass". Your request was made on the basis that you believe that the academic integrity of the written examination and your "student right" had been violated.

According to your letter, the academic integrity of the written examination was violated because the exam did not follow exactly the content and format agreed upon by your and your committee in May of 1999. In your letter, you stated that the academic integrity of the exam was violated because "Dr. Duft's conduct mislead and inhibited the advisory committee to develop a fair evaluation of the preliminary examination." I can find no evidence, from the record or from communication with the advisory committee, that Dr. Duft "mislead and inhibited" the advisory committee from developing a fair evaluation of your preliminary examination.

Also, according you your letter, your "student right" was violated because your "right to be governed by clearly stated and justifiable academic procedures, rules, and regulations has been seriously violated." As I understand your argument, you believe that the "Proposed Content and Format of the Examination" was a legal contract which

bound the advisory committee to specifics in developing the prelim exam and that you must be given a full six months to study for the exam as stated in the "Proposed Content and Format of the Examination".

There is no mention of a document called "Proposed Content and Format of the Examination" in the IIDP handbook and there is no statement that such a document would be a legal contract between the student and his committee. In fact, the IIDP handbook states that it is the "prerogative" of the advisory committee to discuss the format of the exam with the student. The handbook does not encouraged the student to "initiate" conversations with his or her advisory committee at least six months before the preliminary examinations but the dynamic nature of research and scholarship are exemplified by the useful strategies that students may use in studying for exams.

The sold purpose of the preliminary examination is to "determine the fitness of the student for pursuing a doctoral program in the field in which a degree is desired." In your case, five graduate faculty at Washington State University, all who are in good standing with the University and Graduate School and all who have had extensive experience in evaluating graduate students for their academic fitness to pursue the PH.D. degree have unanimously judged you academically unqualified to become a Ph.D. candidate in the Individual Interdisciplinary Doctoral Program (IIDP). I can find no sufficient basis on which to overturn the academic judgment of these five WSU Professors.

Sincerely,
s/ H.H. Hill
Herbert H. Hill
Associate Dean of the Graduate School
Coordinator of the Individual Interdisciplinary Doctoral Program
cc: Karen DePauw, Dean of the Graduate School
Ken Duft

Date: Wed, 19 May 1999 09:27:29-0500
From Ken D. Duftduftk@wsu.edu
To: inaba@wsu.edu, zhanghao@wsu.edu,
wanghong@wsu.edu, jkling@wsu.edu,
bsakkara@wsunix.wsu.edu
Subject: Graduate Advisory Committee

First of all, I'd like to thank each of you for agreeing to serve in Ben's Graduate Advisory Committee. I look forward to working with you. In an attempt to get Ben's program focused, and provide him with advice/direction, I've asked that the attached materials be prepared. Please review this proposal and respond with any comments/observations. In particular, I would direct your attention to the requested exemption relating to exams already passed, the proposed contents of the written exam in Finance, the take-home exam in Agribusiness Management and Marketing, and the proposed time schedule. I solicite your approval and/or comments and invite you to add or amend the proposed materials as you judge appropriate. My goal is to afford Ben some direction to his work and study over the next six months, or that period of time leading up to the examinations. Thank you again for your assistance and please feel free to contact me if you have questions. My hope is that we can all reach an agreement on this program of study/examination before the end of June.

Ken D. Duft
Prelim~1.1.wpd

Date: Wed, 26 May 199913:31:33-0700(PDT)
To: Ken D. Duft duftk@wsu.edu
From: Hong Wang <wanghong@wsu.edu>
Subject: Re: Graduate Advisory Committee

Ken,

Sorry for replying late, I was in Toronto the whole last week.

Thanks for preparing the document, it looks good to me. (You might have noticed that the fonts are not consistent.) I agree to the prelim exams you proposed. As I'm not familiar wit some of the books in the reading list, I wonder if you have included some readings on the Present Value models. These are relevant in financial management and investment. The book "Present Value Models and Investment Analysis" by Robinson and Barry 1996, The Academic Page, is a good one.

I will be gone from 6/1 to 7/9. Please let me know what I can do next.

Holly

Hong Holly Wang, Asst. Professor, Phone (O)(509)335-8521
Dept. of Agricultural Economics (H))509(334-0344
Washington State University FAX (509(335-1173
P.O. Box 646210 Email: wanghong@wsu.edu
Pullman, WA 99164-6210

Date: Thu, 03 Jun 1999 15:28:37-0500
From Ken D. Duftduftk@wsu.edu
To: bsakkara@wsunix.wsu.edu
Subject: Ben's Prelim Proposal

Ben,
I'm not sure what Professor Inaba is asking here. Can you assist?
Ken

From: inaba@wsu.edu
Date: Thu, 20 May 1999 16:48:44-0700(PDT)
To: duftk@wsu.edu
Subject: Ben's Prelim Proposal

Ken:
I received Ben's Prelim Proposal for his IIDP. I have only one question concerning the oral exam. Will Ben be responsible for reviewing the material covered on the written exams he took earlier (and are exempted in the IIDP)? In particular, will he be responsible for material covered in the Microeconomics Core Exam?

Proposed Content and Format of the Preliminary Examination*, Individual Interdisciplinary Doctoral Program (IIDP)
For Benjapon Sakkarapope

Advisory Committee:
Dr. Kenneth Duft: Chair, Dept. of Agricultural Economics
Dr. Hong Holly Wang: Committee, Dept. of Agricultural Economics
Dr. Frederick Inaba: Committee, Dept. of Economics
Dr. John L. Kling: Committee, Dept. of Finance
Dr. Hao Zhang: Committee, Dept. of Statistics

Requirement:

The preliminary examination contains both written and oral portions.

Schedule:

-Written examination: 2nd week of December 1999
- Oral examination: 2nd week of January 2000

Written examination:

General requirement/format:

"The content, format and schedule for the written examination will be determined by the student's advisory committee. The committee may be guided by an examination format normally utilized in the chairperson's department, introducing alternations in that format as appropriate for the individual student" (IIDP handbook, p. 15).

According to the IIDP handbook, page 15 (the blue-cover handbook), the content of the questions should cover three disciplines, Economics, Agricultural Economics, and Finance. "The committee members may want to write

* This content and format of the examination was approved and agreed upon by the committee members and the student in May 1999 as part of the procedure subscribed in the IIDP Faculty/Student Handbook.

individual questions based upon their specific expertise, dawn from the examination reading list the committee has agreed upon for the student to study. The committee may then gather (without the student), bring with them their individual questions. The committee will then proceed to select and/or compose questions for the examination, ensuring all of the areas for which the student is responsible are covered."

Exemption requested:

Since the student already passed the microeconomic core exam, Dept. of Economics and the theory preliminary exam, Dept. of Agricultural Economics, the committee will give credits for both portions. Each exam is a four-hour exam drawn from fundamental theories of each discipline. It is also required for doctoral students in the doctoral programs and reflects a higher level of expertise of each discipline than the IIDP expectation.

Proposed written exam:

The exam will contain two remaining portions: i) Finance and ii) Agribusiness management and marketing.

i)Finance. The exam will be a four-hour-in-class exam; (1) Financial management and investment: three questions and choose two, and (2) Finance Theory: three questions and choose two.

ii)Agribusiness management and marketing. The exam will be a one-week-take-home exam and case study format.

Oral Examination:

"The oral examination is conducted by the entire committee and a representative of the Graduate Studies Committee. The program coordinator of the Individual Interdisciplinary Doctoral Program will also ordinarily be present. During the oral examination, the student may be asked to address any questions remaining after committee members have read the written examination, any related

scholarship, and if appropriate, the student's future research plans" (IIDP handbook, p. 15).

Email address:

"Frederick Inaba" inaba@wsu.edu, phone: 335-1940
"Hao Zhang" zhanghao@wsu.edu, phone: 335-2958
"Hong Holly Wang" wanghong@wsu.edu, phone: 335-8521
"John Lee Kling jkling@wsu.edu, phone: 335-0931
"Kenneth D. Duft" duftk@wsu.edu, phone: 335-2972
"Benjapon Sakkarapope" bsakkara@wsunix.wsu.edu, phone: 332-8911

Suggested reading list for the preliminary examination:

Financial management and investment:

Brigham, Eugene F. 1995. Fundamentals of Financial Management. 7th. The Dryden Press: Philadelphia.
Sharpe, William F., Gordon J. Alexander, and Jeffery V. Bailey. 1995. Investment. Prentice Hall: New Jersey.
Taggart, Robert A., Jr. 1996. Quantitative Analysis for Investment Management. Prentice Hall: New Jersey.
Clarke, Roger G. Measuring and Managing Investment Risk. Chapter 6 of MBA Investment.

Finance theory:

Huang, Chi-fu and Robert H. Litzenberger. 1988. Foundations for Financial Economics. Prentice Hall: New Jersey.
Arrow, K. 1970. Essays in the Theory of Risk-Bearing. Chapter 3. Amsterdam: North-Holland.
Pratt, J. 1964. Risk Aversion in the Small and in the Large," Econometrica, 32, pp. 122-136.
Rothschild, M., and J. Stiglitz. 1970. "Increasing Risk I: A Definition," Journal of Economics Theory, 2, pp. 225-243.
Mossin, J. 1966. "Equilibrium in a Capital Asset Market," Econometrica, 34, pp. 768-783.

Ross, S. 1978. "Mutual Fund Separation in Financial Theory: The Separation Distributions," Journal of Economic Theory. 17, pp. 254-286.

Roll, R 1977. " A Critique of the Asset Pricing Theory's Test," Journal of Financial Economics, 4, pp. 129-176.

Ross, S. 1976. "Arbitrage Theory of Capital Asset Pricing," Journal of Economic Theory, 13, pp. 341-360.

Sharpe, W. 1964. "Capital Asset Prices: A Theory of Capital Market Equilibrium under Conditions of Risk," Journal of Finance, 19, pp. 425-442.

Arrow, K. 1964. "The Role of Securities in the Optimal Allocation of Risk-bearing," Review of Economic Studies, 31, pp. 91-96.

DeAngelo, H., and R. Masulis. 1980. "Optimal Capital Structure under Corporate and Personal Taxation," Journal of Financial Economics, 8, pp. 3-29.

Black, F., and M. Scholes. 1973. "The Pricing of Options and Corporate Liabilities," Journal of Political Economy, 81, pp. 837-654.

Breeden, D., and R. Litzenberger. 1978. "State Contingent Prices Implicit in Option Prices," Journal of Business, 51, pp.621-651.

Galai, D., and R. Masulis. 1976. "The Option Pricing Model and the Risk Factor of Stock," Journal of Financial Economics, 3, pp. 53-81.

Merton, R. 1973. "Theory of Rational Option Pricing," Bell Journal of Economics and Management Sciences, 4, pp. 141-183.

Smith, C. 1976. "Option Pricing," Journal of Financial Economics, 3, pp. 3-51.

Smith, C. 1979. "Application of Option Pricing Analysis," in The Modern Theory of Corporate Finance, Michael C. Jensen and Clifford W. Smith, Jr., eds., McGraw-Hill: New York.

Arkerlof, G. 1970. "The Market for Lemons," Quarterly Journal of Economics," 89, pp. 488-500.

Rothschild, M. And J. Stiglitz. 1976. "Equilibrium in Competitive Insurance Markets: An Essay on the Economics of Imperfect Information," Quarterly Journal of Economics, 90, pp. 812-824.

Agribusiness management and marketing:

Bruns, William J. 1992. Introduction to Financial Ratios and Financial Statement Analysis. Harvard Business School, #9-193-029.

Dolan, Robert J. 1984. Basic Quantitative Analysis for Marketing. Harvard Business School, #584-149.

Levitt, T. 1960. "Marketing Myopi," Harvard Business Review, (July-August).

Kotler, P. And S.J. Levy. 1969. "Broadening the Concept of Marketing," Journal of Marketing, (January).

Anderson, P.F. 1982. "Marketing Strategic Planning and the Theory of the Firm," Journal of Marketing, 46(Spring).

Dean, Joel. 1991. "Pricing Policies for New Products," Harvard Business Review, pp. 3-16.

Jackson, Barbara Bund. 1991. "Manage Risk in Industrial Pricing," Harvard Business Review, pp. 89-104.

Farris, Paul W. and David J. Reibstein. 1991. "How Prices, Ad Expenditures, and Profits are Linked," Harvard Business Review, pp. 37-50.

Day, George S. 1975. "A Strategic Perspective on Product Planning," Journal of Contemporary Business, pp. 1-34.

Levitt, Theodore. 1991. "Exploit the Product Life Cycle," Harvard Business Review, pp.93-106.

Booz, Allen and Hamilton Inc. 1982. "New Product Management for the 1980's," Harvard Business School, Article #29.

Stern, L.W. and T. Reve. 1980. "Distribution Channels as Political Economies: A Framework for Comparative Analysis," Journal of Marketing, 44(Summer).

Borden, Neil H. 1964. "The Concept of the Marketing Mix," Journal of Advertising Research, (June), pp.2-7.
Porter, Michael E. 1991. "How Competitive Forces Shape Strategy," Harvard Business Review, pp. 3-11.

Coursework:

Disciplines/Areas	Courses
1. Public Finance: (18 credits)	- Econ 501 Microeconomics - Econ 500 Macro economics - Econ 503 Adv. Microeconomics - Econ 502 Adv. Macroeconomics - Econ 540 Public Finance - Econ 572 Economic Development
2. Financial Management: (17 credits)	- Fin 521 Financial Institutions and Management - Fin 527 Investment Analysis - Fin 528 Portfolio Theory and Financial Engineering - Fin 596 Theory in Finance - Fin 596 Empirical Methods in Finance
3. Agribusiness Finance: (18 credits)	- AgEcon 502 Public Choices and Welfare Economics - AgEcon 503 Demand & Supply System - AgEcon 551 Modeling Agricultural Commodity Markets - AgEcon 560 Agribusiness Management and Marketing - AgEcon 590 Agricultural Policy - Mktg 506 Marketing Management and Administrative Policy

4. Research Methods/ Interdisciplinary: (41 credits)	- AgEcon 510 Statistics for Economists - AgEcon 511 Linear & Nonlinear Programming - Econ 511 Econometrics - AgEcon 512 Adv. Econometrics. - AgEcon 513 Adv. Econometric Applications - Psych 512 Statistical Inference and Research Design - Univ 591 Seminar in Interdisciplinary Study - Univ 598 Seminar in Interdisciplinary Research and Methodology - Univ 800 Doctoral Dissertation*
Total credits = 94	

Note: *Fall 1999 & Spring 2000

EXCERPTS
The Individual Interdisciplinary Doctoral Program Faculty/ Student HANDBOOK

THE ADVISORY COMMITTEE

The student's advisory committee is composed of a minimum of five graduate permanent fulltime faculty members, and is created for the purpose of guiding the student as he or she prepares for admission into the Individual Interdisciplinary Doctoral Program. Once the student's proposal is approved, the committee becomes the official doctoral committee, and generally is retained throughout the succeeding steps of the doctoral process.

Faculty members who serve on Interdisciplinary committees have the opportunity to meet regularly with members of different departments, to engage in dialog, and to oversee a unique doctoral program. Faculty involvement is integral to the process of developing the individual doctoral program.

Composition of the Advisory Committee

Requirements for the composition of the advisory committee include the following:

- Ø Five members of the graduate permanent faculty at WSU. Non-WSU faculty or non-graduate permanent faculty are permitted as additional members.
- Ø The committee chairperson should have previous experience on doctoral committees.
- Ø Four of the five faculty members must be from Ph.D.-granting units.
- Ø At least two of the five members must be from the same department.
- Ø Faculty must be from at least three separate academic degree-granting departments or programs.
- Ø At least two of the three academic units must be Ph.D.-granting units.

Responsibility of the Chairperson

The chairperson is the student's primary mentor throughout the graduate process. Because the Individual Interdisciplinary student is not housed in a particular department but belongs to the broad conglomeration of the Individual Interdisciplinary Doctoral Program, regular contact with her or his the chairperson is essential. The chairperson's responsibilities include:

- Ø An understanding of the interdisciplinary process, especially the purpose of the program proposal.
- Ø Advising and assisting in the development of the student's program proposal, including editing, if appropriate, and eliciting input from committee members.
- Ø Assisting with paperwork completion; knowing deadline dates.
- Ø "Mentoring" student, holding regular meetings with the student.
- Ø Resolving difficulties, working with program coordinator and chair as appropriate.
- Ø Suggesting courses, faculty, and resources.
- Ø Conducting annual reviews of progress with the graduate student.
- Ø Assisting student scheduling preliminary and final exams, and with securing rooms and appropriate proctoring for written and oral exams in the chairperson's home department.
- Ø Gathering committee members to develop written preliminary examinations for the individual student.
- Ø Contacting committee members following written exams for feedback; giving student approval to schedule oral preliminary examination.
- Ø Overseeing research and writing as appropriate.
- Ø Chairing committee meetings.

Responsibility of the Advisory Committee

As a whole, the function of the advisory committee is to insure the student has a well-rounded graduate program. Initially, the committee assists the student while he or she is

preparing a program proposal for formal admission to the IIDP. Assuming the members continue, the next step is to see the student through preliminary examinations, and, if members are willing to continue again, through the dissertation and final examination. The committee and the Chair are responsible for the quality of the program, both coursework and research. It is expected that the IID program and dissertation must meet or exceed the same quality standards held by departments. The only difference between this program and a departmental program is the interdisciplinary nature of the question asked. The committee's responsibilities and roles include:

- Ø Attending a minimum of committee meetings with the following agendas: meeting initially with the student and the program coordinator of the Individual Interdisciplinary Doctoral Program; approving a program proposal; planning the preliminary examination topics and approving a reading list; writing examination questions with committee; conducting an oral preliminary examination; approving a research proposal; and conducting a final doctoral examination.
- Ø Approving the program proposal outlining the student's graduate program.4 The committee members must be comfortable that the student presents a well-grounded proposal worthy of doctoral study, and is taking sufficient coursework, before approving the program proposal. The committee will want to ensure the student is meeting all requirements of the Graduate Studies Committee of the University for an Individual Interdisciplinary doctoral plan. After the committee's approval, the program proposal will be reviewed by the program coordinator of the Individual Interdisciplinary Doctoral Program and recommended by the program coordinator for approval by the Graduate Studies Committee.

Ø Suggesting coursework and additional faculty as needed.

Ø Supervising 600-level readings if appropriate.

Ø Suggesting reading lists for preliminary examinations.

Ø Approving a structure for written preliminary examinations and writing questions collaboratively as a committee.

Ø Evaluating written preliminary examination; participating and voting at oral preliminary examination.

Ø Approving the research proposal. The research design is the prerogative of the individual advisory committee.

Ø Reading dissertation drafts as appropriate; participating and voting at final oral defense.

Responsibility of the Student

The student must follow all Graduate School Policies and Procedures and abide by the Graduate Student Conduct Code. Each student is responsible for the composition of his or her faculty advisory committee. The student will want to keep in mind the required composition of the committee and the responsibilities of the committee chairperson and members when selecting faculty for their advisory committee. It is important to find faculty who are committed to the interdisciplinary process, who work well together, and who bring disciplinary expertise necessary for an interdisciplinary program. There are several ways to discover faculty that would serve a particular committee well:

Ø Obtain suggestions from the program coordinator or program chair of the Individual Interdisciplinary Doctoral Program.

Ø Make appointments with the chairpersons of appropriate departments, discuss ideas for the doctoral project, and request names of faculty with suitable expertise.

Ø Take courses from a variety of faculty.

Ø If one faculty person declines to serve on a committee due to other time commitments, ask him or her for suggestions of other faculty.
Ø Talk with other graduate students.
Ø Examine the WSU website and faculty interest pages
Ø Go through the WSU Graduate Study Bulletin and star all courses that are potentially appropriate for specific interest areas. Determine who teaches them.

Changes and/or Substitutions in Committee Composition

In the case that a faculty member must be replaced, necessitating a change in advisory committee composition, several options are available:

Ø If a faculty member is temporarily unavailable (i.e., while on sabbatical) the member can:

- Be dropped from the committee and replaced. The student must fill out a form
available in the Graduate School and obtain the signatures of all committee members, including the new member.
- Continue on the committee, receiving proposal drafts, etc. by fax or mail and report feedback to student and chairperson.

A complete approved committee is mandatory for the continuation in the IIDP program. If a faculty member leaves the committee the student must find a replacement committee member immediately and file a change of committee from with the Graduate School. If a committee chair must be replaced, the student must discuss the selection of a new chair with the program coordinator. The student must replace the chair immediately or be dropped from the program. Should three or more committee members resign from committee, the student and their program will be reviewed by the program coordinator. The coordinator may recommend to the Program Chair that the student be dropped.

Ø All committee members are required to attend preliminary and final oral examinations. If a faculty member is

unavailable for either examination, the student may ask another graduate permanent faculty member to act as a substitute. The student must obtain a "Committee Substitution" form from the Graduate School which all committee members (including the substitute) will must sign. The absent faculty member must promptly receive and sign the final ballot and/or dissertation signature page following the examination. He or she may be present via telephone, although a substitute faculty member must still be in the room during the oral examination. With Graduate School approval, WHETS may also be considered.

THE PROGRAM PROPOSAL

The program proposal is the formal application to the Individual Interdisciplinary Doctoral Program. The proposal must be approved by each member of the student's faculty advisory committee, the Department Chairs from which the advisory committee comes, and be reviewed by the program coordinator of the Individual Interdisciplinary Doctoral Program, who will then submit the proposal to the University's Graduate Studies Committee for final admission into the program. It is important to remember this is not a research proposal. The program proposal is a comprehensive document demonstrating a cohesive interdisciplinary plan of doctoral study. This plan must include an introduction to the proposed areas of study and a coherent rationale for the integration of these areas; resources of faculty, disciplines and coursework available at WSU; plans for preliminary examinations and a brief dissertation proposal.

It is critical that the program proposal be comprehensive enough that the student's faculty advisory committee and the Graduate Studies Committee at WSU are satisfied that the student will undertake a rigorous, well-defined doctoral program. It is also important to remember that specific elements in the proposal could change as the student matures in his or her study and as additional resources become available to him or her. In the case of

shifting interest areas or dissertation focus, the student is free to negotiate with her or his faculty committee throughout the process to accommodate agreed upon changes. In the case of coursework, once a program proposal is officially approved, any changes in course list must be documented on a Program Change form, available in on the Graduate School website, which is submitted to the Graduate School with the approval of the student's faculty advisory committee.

If a student wishes to completely change the focus of their program, the student must reapply to the IIDP program. Major committee changes, particularly the chair of the committee, will result in review of the students program by the program coordinator who may recommend reapplication for conditional acceptance.

Elements Required in the Program Proposal

The program proposal will result in a 10- to 20-page written document and should include each of the following:

A summary statement of no more than 250 words that describes the proposal objective, the need for the disciplines selected and a rationale for interdisciplinary study. This summary will be a part of the documentation sent to the Graduate Studies Committee.

1. Introduction

A brief description (100-200 words) of the doctoral project indicating the knowledge areas needed to understand the academic areas involved, with citations of some of the relevant background literature. This is an overview of what will be described in more detail in the remainder of the proposal.

2. Interest Areas:

This is the most difficult for scholars used to thinking "disciplinarily," yet the most unique and interesting part of an Interdisciplinary proposal. This section requires identification and description of three areas to be covered throughout the doctoral process. The areas are distinguished from departments or degree-granting units. Instead, the latter provide resources, including coursework and faculty

expertise for the Interdisciplinary student to learn and master the areas of study. Each area may require courses and expertise from several disciplines; no area will be synonymous with one discipline.

No one area is equivalent to a particular discipline, such as History or Political Science. Nor will the student be expected to emerge with a doctorate in each of three disciplines. The student will master enough of each particular discipline to be able, at a minimum, to understand the basic foundations – at the level, for example, of assuming critical engagement with disciplinary scholarship and journals, or having the expertise to teach a course in each discipline -- and to utilize those foundations toward sound interdisciplinary scholarship.

3. Degree-Granting Units

Identify the three main disciplines (at minimum) that support and provide coursework in the interest areas. In the example above, the appropriate disciplines would be History, Political Science and Communications. Name these disciplines and justify why they are useful.

4. Advisory Committee:

A list of the names and the departments of the chairperson and graduate faculty on the advisory committee, including a description of the specific contributions of each faculty member.

5. Proposed Coursework:

A list of courses, including prefix, title, number of credits, and semester taken (*star all those courses yet to be taken) for the entire doctoral program of study. The course list should be arranged by interest area (see #2 above). Each area may include courses from several disciplines. A good rule to remember is to include at least three courses from each of the three degree-granting units drawn from. Research methods, S/F graded classes, and required interdisciplinary courses may be listed in a separate category.

6. Justification for Interdisciplinary Approach:

The student must provide an explanation of why the proposed program does not fit or is not available within any one department or existing doctoral program at WSU. The explanation should include why the three interest areas are needed to understand the topic, rather than just one interest area. This is the most important element of the proposal. Special care should be paid to this section.

7. Preliminary Examinations:

A description of the preliminary examination to be taken, including written and oral examinations. The examinations are often divided into separate, comprehensive examinations over each of the interest areas, and cover background information as well as scholarship relevant to future research. Preliminary examinations must be taken within four years of formal acceptance to the IIDP program.

8. Proposed Research:

A brief description of the proposed topic of a dissertation as related to the overall doctoral program. A more detailed research proposal will be written after passing preliminary examinations. The research will ideally represent one of any number of specific research projects that a student could draw from the doctoral foundation gained through his or her individual interdisciplinary program. …This section should not be more than three pages and should provide broad outlines of the area of study.

9. Timeline:

The timeline should include the semester and year the student expects to: 1) complete coursework; 2) take preliminary examinations; 3) conduct and complete research; 4) graduate. The timeline should be realistic and reflect the true length of time the research will take.

10. References

A list of sources referenced in the program proposal.

11. Signed Statement by Committee.

"We, the Ph.D. advisory committee for Examples of complete program proposals are available in the Graduate School office of the program coordinator. Examples are

provided and discussed as well in the Interdisciplinary Seminar (UNIV 591).

The Approval Process

The approval process entails the following steps:

Advisory Committee Approval:

The student's advisor and the program coordinator of the Individual Interdisciplinary Doctoral Program will work closely with the student in preparing the program proposal. Often, several drafts are warranted, to clarify the interest areas, coursework, and other details. The program proposal must be reviewed by the program coordinator and approved by all members of the student's advisory committee (a final meeting for approval may be necessary). The student should also prepare a Plan of Study form (available at www.gradsch.wsu.edu) and obtain committee signatures at the approval meeting. This form should be included with the signature page and sent to the IIDP program coordinator. The Chair will sign the Plan after GSC has approved the proposal. This becomes the official program of study and is filed at the Graduate School.

Securing letters from Department Chairs:

After approvals have been secured, the student must contact the chair of each department from which he or she has a faculty person on the committee, provide them with a copy of the program proposal, and request a letter be sent to the program chair in the Graduate School. The letter needs to include the following information:

-Certification that the program cannot be completed solely within their department.

-Acknowledgment that the faculty members from their department are available to serve on this Interdisciplinary advisory committee.

Graduate Studies Committee Approval

After the letters from department chairpersons have been received in the Graduate School, the program coordinator will summarize the student's program proposal

for submission to the University's Graduate Studies Committee for final approval (neither the student nor any member of the advisory committee needs to be present at the Graduate Studies Committee meeting). This process, depending upon when the Graduate Studies Committee meets, takes at least one month. The signature page must be submitted to the program coordinator. An electronic copy of the proposal must also be submitted as well. The student will be asked to review the summary sheet for accuracy before it is sent to all Graduate Studies Committee members. The proposal will be available for GSC members to read on the committee website. It will be removed as soon as the committee has made a decision. An official letter will be sent to the student acknowledging approval the committee decision when it has been granted.

THE PRELIMINARY EXAMINATION

The preliminary examination contains both written and oral portions, as described below. The earliest a student can take preliminary examinations is at least two semesters after the program proposal has been approved.

The Written Examination

The content, format and schedule for the written examination will be determined by the student's advisory committee. The committee may be guided by an examination format normally utilized in the chairperson's department, introducing alterations in that format as appropriate for the individual student.

The Oral Examination

The oral examination is conducted by the entire committee and a representative of the Graduate Studies Committee. The program coordinator of the Individual Interdisciplinary Doctoral Program will also ordinarily be present. During the oral examination, the student may be asked to address any questions remaining after committee members have read the written examination, any related

scholarship, and, if appropriate, the student's future research plans.

Responsibility of the Advisory Committee

It is the prerogative of the advisory committee to talk with the student and determine the actual format of the examinations, subject to Graduate School regulations. Because each "interest area" generally covers academic expertise drawn from more than one degree-granting unit, the committee members from various disciplines should collaborate in the writing of examination questions. The preliminary examination should cover all of the student's interest area's of study (see pages 8-9 above). For example, the examination could be divided into four increments: the first three might include two to four sets of questions, each set covering one of the three interest areas, with the fourth increment consisting of questions requiring a synthesis of the three areas.

The committee members may want to write individual questions based upon their specific expertise., drawn from the examination reading list the committee has agreed upon for the student to study. The committee may then gather meet (without the student), bringing with them their individual questions. The committee will then proceed to select and/or compose questions for the examination, ensuring all of the areas for which the student is responsible are covered.

All of the committee members evaluate the written examination, and communicate with the chairperson the results of their evaluation. Every member of the advisory committee is required to be present at an oral preliminary examination.

Responsibility of the Chairperson

The chairperson will first ensure that the committee members and student agree upon a reading list for preliminary examinations, as well as on a date for the written and oral examinations. The chairperson will call any necessary meetings of the committee (without the student) to draft or review the written portion of the examination. In

addition, the chairperson may advise the student in scheduling a room that can be proctored by departmental personnel, if an in-class examination format has been agreed upon. Arrangements to use a computer for written examinations, if desired, should be worked out between the student and chairperson.

Responsibility of the Student:

When the written examination is designed as an "on-campus" examination, the student should schedule a room, usually in the chairperson's department, and use of a computer if appropriate.. After completing the written examination and gaining the approval of his or her committee chairperson, the student must obtain a scheduling form from the Graduate School to schedule the oral examination (the student will have previously agreed upon a date and time with his or her advisory committee members). Signatures are required from each member of the committee, and dates of both the written and oral portions of the examination are to be included. Currently, the form must be submitted to the Graduate School no less than ten working days before the oral examination. No more than thirty days should elapse between the written and the oral examinations.

The student should schedule a room for the oral examination, usually in the chairperson's department. [See p. 7 above on procedures to follow if a member is unable to attend. See Graduate School Policies and Procedures for most recent guidelines.]

Preparing for Preliminary Examinations

The student should initiate conversation with his or her committee at least six months before the preliminary examinations will take place to develop a reading list with which he or she can prepare for exams. Useful strategies students may use in studying for exams include:

Ø While proceeding with coursework, develop a bibliography for each interest area, including key works used in courses or for research. Keep a log of

notes on each work for easy later recollection and reference.

Ø Draft a bibliography (with subsections: one section for each interest area) to give to members of the student's advisory committee for their suggestions.

Ø Once a bibliography is approved by all members of the advisory committee, begin to strategize study. Drawing from the reading list, draft sample questions for each exam that cover the most important points. Taking those questions to advisory committee members, the student can ask whether he or she is on the right track.

Ø Ask to see any files of examination questions that might be kept in the committee chairperson's departmental office.

EXCERPTS
The Graduate Student Code

WSU's graduate programs are marked by outstanding faculty, modern and challenging curricula, first-rate students, and support systems that enhance student and faculty development. The best support systems include staff, comfortable office or laboratory space, resources necessary for scholarship and research, and policies and written guidance for students to meet programmatic and University requirements. This Code serves as written guidance, focusing upon graduate student rights and responsibilities, and on avenues for adjudication of these rights and responsibilities.

Graduate students are first and foremost students; and as such they are obliged, as is the University, to abide by the responsibilities codified under the Washington Administrative Code (WAC). These responsibilities are to maintain order and to censor those who would disrupt the educational processes. To fulfill these joint responsibilities, the University community has established numerous policies that apply to graduate students and graduate student organizations (WAC 504-25-010), many of which appear in the WSU Student Handbook, available at the Office of Student Affairs, 360 Lighty Student Services Building, or ... Among the policies, rules, regulations, and procedures contained in the Handbook are the WSU Discrimination and Sexual Harassment Policy (a policy applicable to all--students, staff and faculty) and the WSU Standards of Conduct for Students. This latter document notably contains the following: Conduct Regulations, Disciplinary Process and Procedures, and Academic Integrity Standards and Procedures. These are important rules, regulations, and standards that apply to all students at Washington State University.

Aside from this--and what this code intends to clarify--is that WSU faculty members and graduate students share responsibilities for creating a supportive environment--

community-minded in purpose and conducive to learning. Good working relationships among faculty members and graduate students require that each recognize and honor their respective rights and responsibilities, to insure high quality graduate education and environment where the players act ethically and professionally at all times. The following guidelines are intended to promote an understanding of graduate students' rights and responsibilities as members of the academic community.

Rights and Responsibilities of Graduate Students

Graduate Student Rights

Graduate students at WSU shall maintain the following rights:

1. To be governed by clearly stated and justifiable academic procedures, rules, and regulations.
2. To be protected from discrimination on the basis of race, gender, sexual orientation, religion, physical disability, nationality, marital status or any other criterion not appropriate to academic evaluation.
3. To be protected against improper disclosure of information concerning academic performance and personal characteristics such as values, beliefs, organizational affiliations, and health status.
4. To have grievances addressed in a timely and confidential manner without fear of reprisal.
5. To refuse to perform tasks unrelated to their academic or professional development program.
6. To take reasoned exception to information and views offered in the classroom, and to reserve judgment about matters of opinion, without fear of penalty.
7. To be accurately informed of program requirements and expectations upon enrollment.
8. To be acknowledged appropriately (e.g., publications and conference presentations) for contributions to faculty members' research and scholarship.

9. To be informed about research responsibilities as outlined in the graduate student departmental handbook, including timely feedback on submitted work and timelines for completion of research, theses and dissertations.
10. To be informed about teaching responsibilities as outlined in the graduate student departmental handbook, including advice for initial teaching assignments and continuing counsel on teaching matters such as performance expectations and grading practices.
11. To be provided with annual good-faith and unbiased evaluations of progress toward degrees.
12. To be given realistic estimates of the average length of time required for completion of master's or doctoral programs and, where applicable, realistic estimates of expected periods of research or teaching assistantship support.
13. To be protected from exploitation such as delay of a graduate student's progress toward a degree because of benefit from the student's proficiency as a teaching or research assistant.

Graduate Students' Responsibilities

Graduate students at WSU shall assume the following responsibilities:
1. To conduct themselves in a mature, professional, and civil manner in all interactions with faculty, staff, other graduate or professional students, and undergraduates.
2. To learn the Graduate School's policies and procedures (see Graduate School Policies and Procedures manual; http://www.wsu.edu:8080/~gradsch/polproc.html), specific program requirements as delineated by academic departments, and standards of performance established by faculty and their respective professional groups.
3. To maintain integrity in learning, independent scholarship, and professional development. (WSU Policies and Procedures for Misconduct in Research and Scholarship; http://virtual.ogrd.wsu.edu/ogrd1/Regulatory.html).
4. To communicate regularly with faculty advisors on matters related to progress within their graduate programs.

5. To acknowledge contributions of faculty advisors and others in work leading to conference presentations and publications.
6. To respect time constraints of faculty members.
7. To respect the responsibilities of faculty advisors to evaluate students' coursework and overall academic progress. Faculty, in turn, are responsible for monitoring the validity and quality of students' research, teaching, and other scholarly activities.
8. To fulfill, in a timely manner, the requirements of their programs, as prescribed by departments or programs.
9. To assume the initiative in selecting committee members for thesis, dissertation, and qualifying exams.
10. To contribute positively to a collegial environment within the department or program.
11. To adhere to federal, state, University, and departmental rules and regulations regarding the use of animals, human subjects, dangerous and hazardous chemicals, biohazardous and radioactive materials or radiation in research. (WSU Policies and Procedures for Animals, Human Subjects, Dangerous and Hazardous Chemicals, Biohazardous and Radioactive Materials or Radiation in Research; http://virtual.ogrd.wsu.edu/ogrd1/Forms.html#memo4)

Expectations of Departments and Programs

Graduate students at WSU shall also maintain the expectation that departments and programs perform the following:
1. Inform incoming graduate students of codes of professional and academic conduct expected of graduate students.
2. Inform graduate students about University and program requirements, including residency, academic programs, committee formation and changes, and the nature and scope of theses and dissertations.
3. Evaluate graduate students yearly regarding progress toward intended degrees, including notification in writing about satisfactory or unsatisfactory performance. Copies of these evaluations shall be placed in the students' files.

4. Establish criteria for termination of students from programs. Newly enrolled graduate students will be given copies of the established criteria and, should a decision be made to terminate a graduate student, written notification and information regarding the decision shall be delivered in a timely manner to the student. Similarly, graduate students shall receive information regarding grievance procedures.
5. Encourage graduate students to participate in professional meetings, including the delivery of presentations of research or scholarly findings.
6. Assist graduate students in the timely completion of departmental or program requirements.
7. Have a written policy to guide collaborative projects and authorship.
8. Have a graduate student manual that includes all department policies governing graduate student appointments, rights, and responsibilities.

Expectations of Faculty Advisors and Mentors

High quality graduate programs are those with notable faculty and systems for advising and mentoring graduate students. Advice is needed by graduate students during their early experiences in graduate school. Graduate students deserve guidance from faculty whose interest goes beyond the mere advisor-director role to one of teacher and mentor. Departments and programs are responsible for encouraging effective mentoring and for insuring that graduate students receive advice and mentoring during the course of their graduate studies.

A mentor is a faculty person who assists scholarly development, contributes to intellectual stimulation, and fosters professionally enriching relationships with graduate students. Looked at in slightly different light, a faculty mentor is a peer-to-be--one who encourages and supports independent development--one who nurtures a rapid transition from graduate student to colleague through insightful guidance, trust, and mutual respect.

Students should expect that mentors will interact with them on a regular basis, providing the guidance, advice, and intellectual challenge necessary to complete their degree programs. Students may also change mentors at any time, without fear of reprisal.

Graduate students should expect that advisors and mentors will do the following:

1. Interact in a professional and civil manner consistent with University policies governing nondiscrimination and sexual harassment. Particular attention should be paid to mentoring that involves diverse or nontraditional students.
2. Create an ethos of collegiality in classroom, laboratory, or studio supervisory relations that stimulates and encourages students to learn creatively and independently.
3. Develop clear understandings about specific research expectations and responsibilities, including timelines for completion of theses or dissertations.
4. Provide verbal or written comments and evaluation of students' work in a timely manner.
5. Discuss laboratory, studio, or departmental authorship policy with graduate students in advance of entering into collaborative projects.
6. Acknowledge student contributions to research presented at conferences, in professional publications, or in applications for copyrights and patents.
7. Provide explicit and well-publicized dismissal and appeal procedures.
8. Prevent faculty rivalries from interfering with their duties as advisors, committee members, instructors, or colleagues.
9. Assiduously avoid impeding a graduate student's progress toward a degree because of benefit from the student's proficiency as a teaching or research assistant.
10. Excuse themselves from serving on graduate committees when there is an amorous, familial or other relationship between the faculty member and the student that could result in a conflict of interest.

11. Refrain from requesting students to do personal work (e.g., mowing lawns, baby-sitting, typing papers) without appropriate agr[illegible]ent and compensation.

Adjudic[illegible]on of Rights and Responsibilities

WSU is committed to maintaining a social and academic environment conducive to the educational mission of the institution. While it is hoped that each student's experiences at WSU will be positive, difficulties can and do occasionally arise. If concerns arise, it is imperative for graduate students to know of options available for resolution.

Figure 1 contains a summary of how student concerns are normally handled at WSU. The course of action is to seek resolution at the lowest possible level with one's advisor, the department or program Graduate Coordinator, or when necessary through the department chair. If a student is unable to remedy the situation through these means, or if there is a reason why these individuals cannot be approached, problems can be taken directly to another appropriate office.

Because of the wide variety of issues that may beset students, there are several options available in addition to the Graduate School. Students may, for instance, consult the Office of the Ombudsman or the Center for Human Rights at any point in working toward the resolution of a problem. It should be realized, however, that the Ombudsman by definition cannot serve as student advocate but may facilitate contact with individuals or units at the University.

Concerns which are brought to the Graduate School may likewise draw on these or other resources within the University (see Appendix), as necessary.

Strictly academic issues brought before the Graduate School are typically handled by the Associate Deans of the Graduate School. Appeals of college or unit level decisions are handled by the Dean of the Graduate School in consultation with the Associate Deans. Graduate students' appeals process involves several steps: adjudication at the unit level, adjudication at the college level with, if necessary and appropriate, a final appeal to the Dean of the Graduate

School. Unusual academic matters and some combinations of conduct and academic matters may be referred to the Committee on Graduate Student Rights and Responsibilities (CGSRR). In the case of strictly academic matters, the CGSRR consists of graduate faculty only. In matters consisting of both academic and conduct issues, the CGSRR is composed of graduate faculty and graduate students recommended by the Graduate Studies Committee. The CGSRR will operate with due respect to the rights of graduate students and graduate faculty, including the conduct of confidential interviews, the rights of all parties to review and address allegations, and rights to a fair hearing. Once allegations are brought to the Graduate School in writing, the CGSRR will be formed within 30 days and will deliberate and render a recommendation to the Dean of the Graduate School within 60 days. This recommendation will be acted upon by the Dean in consultation with the Provost and the Attorney General. Professional students within the College of Veterinary Medicine will follow College policies and procedures for the review of academic issues. The final outcome of this process may be appealed to the Dean of the Graduate School, who will then follow the procedures outlined above.

Appeals can be brought before the Provost. The Provost will consider appeals based on procedural irregularity and will not reopen cases only for the purpose of re-investigating the grievance.

In all instances, the University seeks fair and expeditious action on academic and conduct issues. Resolutions must uphold the highest standards of academic freedom and integrity, while honoring the rights and dignity of all individuals in the University community.

EXCERPTS
POLICIES AND PROCEDURES OF THE GRADUATE SCHOOL, October 1998

Graduate Education at Washington State University

The Graduate School at Washington State University subscribes to the principles and laws of the State of Washington and the federal government pertaining to civil rights and equal opportunity. Our policy strictly prohibits discrimination on the basis of race, sex, including sexual harassment, religion, color, creed, national or ethnic origin, physical, mental, or sensory disability, marital status, sexual orientation, and status as a Vietnam-era or disabled veteran in the recruitment, admission, and retention of graduate students as well as the implementation of Graduate School policies and procedures.

Graduate School

The Graduate School is committed to helping graduate students become scholars, effective researchers, and masters of disciplinary and interdisciplinary knowledge. To these ends, the Graduate Faculty emphasize both independent scholarship and research and classroom learning. All graduate students are expected to participate in research as partial fulfillment of the requirements for advanced degrees. State-of-the-art equipment for the conduct of research is present in the research centers and academic units. Student enrollments in graduate classes and seminars are limited ensuring an active exchange between student and professor. The close relationships between students and faculty members and common aims of all involved in graduate education create an atmosphere that stimulates intellectual curiosity. The individualized nature of graduate education at Washington State University also provides students with flexibility in designing programs of study and broadens the possibilities for unique creative endeavors.

Graduate Faculty

The Graduate Faculty is responsible primarily for conducting graduate education. The faculties of the various

programs, departments, and colleges elect the members of the Graduate Faculty, basing their decision on the nominees' accomplishments as scholars, researchers, and teachers. The Graduate Studies Committee of the Faculty Senate, composed of Graduate Faculty members and graduate students, assists the Graduate School in the establishment of the policies and procedures of the Graduate School. The Dean of the Graduate School administers the diverse graduate programs throughout the multicampus University within the policies and regulations established by the Graduate Faculty, the Graduate Studies Committee, and the Faculty Senate.

Graduate School Policy

The graduation requirements of the Graduate School which must be met for completion of a graduate degree program are those published in the Policies and Procedures of the Graduate School in effect at the time of the student's initial admission as a regular or provisional student. Departmental requirements are those in effect at the time the student files a program.

Subsequent changes in degree requirements of the Graduate School or in departmental requirements may be substituted at the option of the student upon approval by the master's or doctoral committee, by the departmental chair, and by the Dean of the Graduate School.

If a student is dropped from the University for failure to maintain continuous enrollment, the requirements of the Graduate School are those in effect at the time of readmission to the Graduate School. Modification of certain aspects of Graduate School policy may be necessary to conform with legislation enacted by the Washington State Legislature.

Graduate School policies are established by action of the Graduate Studies Committee and the Faculty Senate, and approved by the Provost. Interpretations of policy are made by the Graduate Studies Committee or by the Dean of the Graduate School acting for the Committee. Recommendations for changes in policy should be addressed

to the Graduate Studies Committee through its chair or through the Dean of the Graduate School.

It is the intention of the Graduate School to relieve professors and departments of the details of administration, permitting maximum freedom in decision-making consistent with established policies and with high standards of graduate education. In general, the policies of the Graduate School represent minimal standards for graduate student admission, continuance, and degree completion. Departmental requirements may, and usually do, go beyond these minimum standards.

Student Status Classification

The following student status classifications are for students who wish admission to the Graduate School to pursue an advanced degree or begin exploratory study.

Enrollment Categories

Graduate students at Washington State University must maintain continuous enrollment from first matriculation until all the requirements for the degree are completed. Enrollment may be in one of the following categories: (a) full-time enrollment of ten credits or more; (b) part-time enrollment of less than ten credits; (c) summer session enrollment for credit; (d) graduate leave status[1] or (e) enrollment by mail for 590, 600, 700, 702, and 800. Students wishing to schedule a preliminary or final examination must be enrolled for examination credit (700, 702, 800) during the term in which the examination is taken. Enrollment for this purpose should be completed during the usual registration period; otherwise the student is subject to the usual late registration fees. Students must have Graduate School permission to enroll after the tenth day of classes.

Procedure for Enrolling under Graduate Leave Status:

* 1. Graduate students are considered to be actively pursuing a degree from the time of first enrollment in Graduate School until graduation or until the limits described below have expired. Students who, for any reason, find that

they cannot enroll for credit are considered to be on Graduate *Leave Status.*

2. Students on Graduate Leave Status may discontinue enrollment for credit for a period of 12 months without penalty. After that time, students on Graduate Leave Status who wish to re-enroll will be assessed a fee of $25. The re-enrollment fee must be paid before students re-enroll for credit.

3. Students on Graduate Leave Status will be considered by the Graduate School to be in good standing for up to four consecutive years. After that time, students must pay the appropriate application fee (which is currently $35) and reapply for admission to the Graduate School and to their graduate program.

4. Graduate Leave Status students whose time limits for completion of the degree have expired must reapply for admission to the Graduate School.

5. Students who have been on Graduate Leave Status for more than two consecutive semesters must receive departmental approval for re-enrollment. Such approval will be indicated by the signature of students' department chairs on the request for re-enrollment.

6. Students are advised to keep in contact with their major departments during the period of their Graduate Leave Status. Students who do not do so may be dropped by their departments for making no discernible progress toward completion of their degrees.

Graduate Leave Status cannot be used toward meeting residence requirements, but students on Graduate Leave Status may use library facilities and may take foreign language reading examinations. They may not take graduate examinations (preliminary, qualifying, or final) during Graduate Leave Status terms.

The Dean of the Graduate School, on recommendation of the chair of the major department, may grant a leave of absence for a specified period. No enrollment is required during periods of leave.

Enrollments, Minimum and Maximum

While graduate students may be required by the major department/program to register for a greater number of credit hours, they must enroll at least for the following minimums.

* 1. Students not on appointment as teaching, research, or staff assistants, and enrolling solely for the purpose of completing theses or dissertations or special problems and taking final examinations must register for a minimum of three semester hours of 700, 702, or 800 credit at Washington State University during that semester or summer session.

2. Students not on appointment as teaching, research or staff assistants, and enrolling solely for the purpose of taking master's or doctoral final examinations must register for a minimum of two semester hours of 700, 702, or 800 credit at Washington State University during that semester or summer session. The students' theses, dissertations, or special problems must have been completed during the prior semester to be eligible for the two-credit enrollment.

3. Students not on appointment as teaching, research, or staff assistants, and enrolling solely for the purpose of taking the preliminary examinations must register for a minimum of two semester hours of 800 credit at Washington State University during that semester.

4. Students in any of the above categories who complete the enrollment after the 10th day of classes must register for a minimum of four semester hours of 700, 702, or 800 credit.

5. Graduate students on appointment as teaching, research, or staff assistants during the academic year shall enroll for a minimum of 10 credit hours.

6. Twelve to sixteen hours per semester is considered the normal enrollment for a full-time student.

7. Students on non-service appointments must enroll for a minimum of twelve hours per semester during the academic year.

8. Graduate students on appointment as teaching, research or staff assistants during the summer shall enroll for a minimum of 3 credit hours.

9. Students on non-service appointments for the summer must enroll for a minimum of four hours during the eight-week summer session.

10. Students who wish to take courses during the summer must submit an application for summer enrollment. These applications are included in the Summer Session Bulletin.

11. Enrollment during the academic year is automatically available as long as the student has been enrolled continuously.

12. Students are encouraged to enroll for the maximum number of credits to shorten the time required to complete their degree.

13. International students holding visas should consult with the Office of International Education for enrollment requirements.

Foreign Student Use of Limited Enrollment

Current policy permits foreign students to enroll for 2-3 credit hours only for one semester during the course of their graduate studies in residence. At the time this option is used, these students should be certain they will complete all degree requirements during that semester. If foreign students do not complete, they must enroll as a full-time student in any or all subsequent semesters in residence. This policy is set by the Office of Immigration and Naturalization Service.

Academic Load

An academic load of twelve-to-sixteen credit hours per semester (six in the six-week summer session and eight-to-ten in the eight-week summer session) is considered a full load for a graduate student. Teaching and research assistants are expected to carry the appropriate credits per semester or summer session. Normally, the maximum for students on assistantships is 14 credit hours.

Loads in excess of sixteen hours in a regular semester, eight or ten hours in six- and eight-week summer sessions, respectively, are considered overloads and must have the approval of the major professor and the concurrence of the Dean of the Graduate School. Students on appointment

as teaching, research, or staff assistants or associates also must have approval of their supervisors in order to take an overload. Credit hours of enrollment in "Audit" status are not included in calculating the student's academic load.

Doctoral or Master's Committee

Doctoral Committee

The chair of the major department or program should appoint an advisor for the student during the student's first semester or summer session of enrollment.

The student and advisor, in consultation with suggested committee members from the major and minor departments, prepare the program of studies. The program is submitted via the department/program chair to the Graduate School for approval.

The doctoral committee must include an advisor and at least two other Graduate Faculty members with the advisor serving as chair of the committee. An additional member who holds the highest appropriate degree and whose special knowledge is particularly important to the proposed program, but who is not a member of the Graduate Faculty, may be appointed to the committee and shall vote. At least one Graduate Faculty member of the committee must be from the minor department/program if a minor is declared on the doctoral program. When no minor is declared, no outside member is required. However, when outside supporting work is included in the program, an outside member is recommended.

The doctoral committee is subject to approval by the chair of the major and minor (if applicable) departments/programs and the Dean of the Graduate School. This committee, once approved, has the responsibility of directing the student's progress, supervising the dissertation, and participating in the preliminary and final examinations. Other Graduate Faculty members of the major and minor departments/programs may participate in the preliminary

examination and any Graduate Faculty member may participate in the final examination.

Master's Committee

The chair of the major department or program should appoint an advisor for the student during the student's first semester or summer session of enrollment.

The student and advisor, in consultation with suggested committee members, should develop the program of study and submit it to the chair of the major department/program. The chair will submit the program to the Dean of the Graduate School for approval.

The master's committee is nominated on the program form. For both thesis and non-thesis programs, a master's committee should include at least three faculty members who hold either master's or doctoral degrees. At least two members must be from the Graduate Faculty. The committee for each Master of Arts in Teaching degree candidate must include one member from the College of Education.

Committee Chair

The chair of a doctoral or master's committee must hold a degree of comparable level to that degree sought by the candidate; by special action, however, the Graduate Studies Committee may make individual exceptions on the basis of adequate justification. The chair of a doctoral committee must be a member of the Graduate Faculty. A non-Graduate Faculty member may serve as the chair of a master's committee provided at least two other members of the committee are Graduate Faculty members.

Committee Changes

The chair of the department or program requests committee changes on forms from the Graduate School that indicate old and new committee members. The request may be initiated either by the student or by the committee chair.

Committee Action on Theses/Dissertations

Thesis and dissertation committee members must read and return drafts of theses and dissertations to the student within a reasonable period of time. The Graduate Studies

Committee recommends that committee members hold drafts for no longer than 30 days.

Programs

The following descriptions of program requirements represent minimum requirements; individual departments/ programs may have special requirements, or may require that individual students complete coursework or research beyond these levels. All work taken by graduate students need not appear on their programs.

Approval for use of human subjects or animals in research is required. If the student plans to utilize human or animal subjects for research, please contact either the Office of Grant and Research Development or the Laboratory Animal Resources Center. Please note that departments/programs should ensure that all procedures have been followed and forms filed with the appropriate offices; they can also determine the appropriateness of such narrative within the thesis or dissertation. The Graduate School only seeks verification that University approval has been granted.

Doctoral Programs

3. Program for Interdisciplinary Doctoral Program*

The Graduate School provides the opportunity for exceptional graduate students to prepare a program of study leading to the degree Doctor of Philosophy or Doctor of Arts outside the area of any department or program presently authorized to offer the doctoral degree. A student who wishes

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* MS/PhD Degree Option in Statistics and Related Fields. Students may pursue the Master of Science in Statistics and a doctoral degree in agricultural economics, business administration (decision sciences option), economics and mathematics. This program is excellent for students whose area of interest requires a substantive background in statistics to perform research. Students interested in the statistics option must be admitted to both the Program in Statistics and the doctoral program's degree granting unit. Up to 11 credits may be shared by both the MS and PhD programs. Separate programs of study will be submitted for each degree and degrees will be awarded as degree requirements are completed. Interdisciplinary research projects are recommended.

to enroll in this program must meet the following minimum requirements:

* a. The student must have been granted both a bachelor's degree and a master's degree from an accredited university. Equivalent academic achievement, judged by the Dean of the Graduate School, may be substituted for the master's degree.

b. The student must have studied at Washington State University as a full time student in a recognized graduate program for at least one academic year.

c. The student must have obtained at least a 3.25 GPA in graduate coursework.

Proposals for Interdisciplinary Doctoral Programs must be approved by the Graduate Studies Committee at least two full semesters before the semester in which the preliminary examination is written.

To be admitted to the program, applicants must undertake a number of steps. Applicants wishing to pursue an interdisciplinary degree program should contact the Dean of the Graduate School.

Second Master's Degree

Up to 11 hours of graduate credit which have been applied toward a master's degree at Washington State University may be applied toward a second master's degree. Such credit will be granted only for graded coursework earned at Washington State University and completed with a grade of "B" or higher. Application of such credit toward a student's program for a second master's degree is subject to departmental recommendation and approval by the Graduate School. No credit in 600- and higher-level courses completed before fulfillment of all requirements for the first master's degree may be applied toward a second master's degree program. The second master's degree may not be awarded during the same semester or summer session that the first master's degree is awarded.

Transfer Credit and Credit Restrictions

Credits appropriate to the program of study (with a grade of "B" or higher) earned in other accredited graduate

schools after the award of the bachelor's degree may be transferred and applied toward a student's graduate degree program. Graduate credit earned (with a grade of "B" or higher) in Washington State University prior to formal admission to the Graduate School, other than credit earned while enrolled as a Class 5E or Special 8 student, may be included in the number of prior credits allowed. The total of such credits from the two categories (transfer and prior WSU credit) is subject to the usual time restrictions and approval by the academic unit and the Graduate School. The number of such credit hours is limited to no more than half of the total graded course credits required by the department/program for the master's degree. None of this credit may be applied toward another advanced degree. Individual departments/programs may choose to limit transfer credits to an amount less than that specified above.

The amount of transfer credit allowed on a doctoral degree is subject to departmental recommendations and approval by the Graduate School. However, these credits may not be substituted for residence requirements at Washington State University.

Extension courses, special problems, research and thesis, workshops, and correspondence courses will not receive graduate transfer credit. For necessary interpretations, inquiries should be sent to the Dean of the Graduate School.

Transfer credit is requested formally by listing the courses on the degree program, but preliminary determination will be made earlier upon request to the Graduate School.

Graduate credit from a non-accredited institution will not be accepted for transfer to graduate degree programs. Graduate credit earned within the State of Washington from an accredited institution whose main campus is outside the state will be considered for transfer to a graduate degree program only upon special petition to the Dean of the Graduate School.

Time Limits

The time limit for use of graduate credit toward a master's degree is six years from the beginning date of the earliest course applied toward the degree. As necessary, departments may request an extension for up to one year.

The Graduate School recognizes some programs located at the extended campuses are designed for the part-time student and can be expected to require a longer completion period. Each program for a doctoral degree is considered individually. In most cases, the requirements for the degree should be completed within three years of the date of satisfactory completion of preliminary examination. For unusual cases, the expected date of completion of requirements for the doctoral degree can be set at the time of preliminary examination with the approval of the Dean of the Graduate School. At least four months must elapse between preliminary and final examinations for doctoral degrees.

Preliminary Doctoral Examination

A preliminary examination is required of each doctoral student for advancement to candidacy for the doctoral degree. The student is responsible for scheduling the preliminary examination; it may be scheduled, using forms provided by the Graduate School, only after department/program requirements have been satisfied, after the program has been approved, after a substantial portion of the required coursework has been completed, and when the student and advisor believe the student is prepared for the examination. The student must be registered (minimum of two hours of 800) as a regular graduate student at the beginning of the semester in which the preliminary examination is to be taken, and have at least a 3.0 cumulative grade point average and a 3.0 grade point average or higher on the program courses already taken before the preliminary examination may be scheduled. The preliminary examination should be scheduled by the Graduate School at least 10 working days before the examination is held.

The examination is designed to determine the fitness of the student for pursuing a doctoral program in the field in which a degree is desired. The examination is intended to cover both major and minor disciplines (if a minor is declared). The major examination may be written or oral or both, at the discretion of the major department/program. The minor examination (when applicable) may be written or oral or both, or may be waived, at the discretion of the minor department/program. When the minor examination is waived, the member of the committee from the minor department/program shall vote with the major department/program. The minor department/program is notified if the student has less than a 3.0 grade point average on the student's minor work when the minor examination has been waived.

The members of the doctoral committee including non-Graduate Faculty must be present at the examination or ballot meeting, and all must vote. A representative for the Graduate Studies Committee shall also be present but may not vote. Any other members of the Graduate Faculty from the major department/program or minor department/program (unless the minor department/program has waived the examination) may be present and may vote. At the discretion of the major department/program chair, members of the Graduate Faculty from other departments/programs and non-Graduate Faculty members from the major and minor departments/programs may be present, may ask questions, but shall not vote.

The content and conduct of a preliminary examination is the responsibility of the Graduate Faculty of a degree-granting unit and should be administered by the chair of that unit or someone delegated by the chair. The chair shall be responsible for conducting a fair and searching examination and for affording a reasonable opportunity during the oral portion for all examiners to question the student. There is no time limit for either the written or oral, but all aspects of the

examination must be completed within thirty days from the beginning.

At the conclusion of the oral or at the ballot meeting, if only a written examination is given, the candidate's total performance on the examination should be discussed and ballots cast on the basis of the entire examination. (See Minimum Positive Votes Required to Pass a Candidate.)

In the event of a failed examination, a student may be re-examined for a second and final attempt only at the request of the department/program which previously voted to fail the student and with approval of the major department/program. Departments/programs which previously passed the student may re-examine or waive the right to do so. At least three months must lapse between a failed examination and a re-examination. A department/program in which the student failed is asked to furnish at least four examiners; the entire committee must be present and vote. A student who has failed a preliminary examination does not have an automatic right to a second examination. A student who has failed two preliminary examinations may not become a candidate for the doctorate and the student's enrollment in the Graduate School will be terminated.

A minimum of four months must elapse between the successful completion of a preliminary examination and the scheduling of a final examination.

Academic Standards

The following represent Graduate School minimum requirements; departments/programs may have requirements more stringent than those listed here.

For Award of a Graduate Degree. A student must have a 3.0 cumulative GPA [2] and a 3.0 program GPA [3]. No work of "B-" grade or below may be dropped from a program for an advanced degree, nor can a course be repeated for a higher grade if the final grade is "C" or higher. Any course included in the advanced degree program in

which a grade of "C-" or below is earned must be repeated but not on a P/F basis.

All grades earned by a graduate student in courses listed on the program, except the first grade for a repeated course, must be averaged into the student's grade point average.

For Continued Enrollment. A regular graduate student who has completed only one semester or one summer session of graduate study with a grade point average of 2.75 or above is eligible for continued enrollment. Upon completion of two semesters, one semester and one summer session, or two summer sessions of graduate study and thereafter, a 3.0 cumulative grade point average or above is required for continued enrollment in the Graduate School. Graduate students admitted on a provisional status must maintain a cumulative grade point average of 3.0 or above.

Termination of Enrollment. The enrollment of a graduate student who fails to establish and maintain a cumulative grade point average of 3.0 or above at the end of two semesters, one semester and one summer session, or two summer sessions will be terminated. The enrollment of a graduate student who fails to obtain a 2.75 cumulative grade point average or above at the end of one semester or one summer session of graduate study will be terminated.

Evaluation of Students

All departments/programs must make an annual review of each graduate student. The elements of annual review include:

1. Cumulative record including admission and classification information, coursework, research proposals and all examinations, i.e., advisory, placement, qualifying, preliminary and final examinations.
2. Progress since last review.
3. Qualitative assessment by faculty of progress in research and teaching, as appropriate.
4. Statement as to the rate of progress, i.e., satisfactory or unsatisfactory.

5. Expectations for the next review period.

During spring semester, the department/program chair will give written notification to each graduate student of his/her performance. After appropriate faculty have been consulted, the names of those students to be dropped from a program shall be sent to the Dean of the Graduate School.

Exceptions to Policy, Appeals Procedure

Any request for an exception to policy for an individual student should be submitted in writing through the major professor and the chair of the major department/program to the Dean of the Graduate School. The Dean may then act upon the request or refer it to the Graduate Studies Committee. Any decision by the Graduate School concerning the academic status of a student may be referred to the Graduate Studies Committee for review upon request of the student, a department/program chair, or a thesis committee chair.

Graduate students with disabilities are encouraged to ask for reasonable accommodation and assistance through the Disability Resource Center, the department/program, and the Graduate School.

Footnotes:

[1]Graduate Leave Status is a term used to denote that a student is maintaining an active student file in the Graduate School while not being enrolled for credit.

[2]Cumulative GPA--GPA for all courses taken after admission to the Graduate School at WSU except the first grade for repeated courses.

[3]Program GPA--GPA for all courses listed on the student's degree program and taken at WSU.

EXCERPTS
WSU'S BOARD OF REGENTS BY LAW

ARTICLE II: MEETINGS OF THE BOARD

J. Communications to the Board. Any person who wishes to bring a matter to the attention of the Board may do so by submitting written communication to the Board at... Such communication shall be mailed to each Regent within one business day following receipt in the Office of the President.

K. Appearance Before the Board. The meetings of the Board are intended for presentation of agenda items by the chairs of the Committees, the University President, the University Provost, and the University Vice Presidents for discussion and action by members of the Board. Where appropriate, public testimony regarding a special issue may be permitted provided that the hearing of such testimony has been approved by the University President and the President of the Board. The President of the Board may reasonably limit the total amount of time allocated for public testimony on particular issues for each speaker and may limit testimony to assure that it is germane to the specific matter under consideration. Individuals seeking to address the Board shall communicate their request to the University President no fewer than seven (7) days prior to the regular meeting.

No officer, faculty, staff, or other employee or student of the University shall submit any matter to the Board for official consideration except as provided by the guidelines and procedures established for the submittal of items for the agenda.

L. Guidelines and Procedures for Submittal of Agenda Items to the Board. The topics of business to be introduced at a regular or special meeting shall be included on the Agenda by observing the following guidelines.

1. Agenda items may be submitted only by an appropriate University official as follows: Regent, President, Provost, Vice Presidents, and Senior Assistant Attorney General.

2. One-page reports are to be submitted by representatives of University groups as follows: Chair or Vice Chair of the Faculty Senate, President or Vice President of the Graduate and Professional Student Association, President or Vice President of the Associated Students of Washington State University, and President or Vice President of the Alumni Association.

3. All items included on the Agenda must pertain to one of the areas outlined in Article II, Section 6, of these Bylaws.

4. All items submitted to the Board for action must first be submitted to and discussed by the appropriate Committee, as provided in Article III of these Bylaws, at least one (1) Committee meeting prior to the meeting at which action will be requested. This requirement may be suspended by the President of the Board at any meeting.

5. All items to be included in the agenda must be submitted in writing no later than ten (10) days prior to the Board meeting to the Secretary of the Board, who shall be responsible for preparation and distribution of the Agenda.

From: Hao Zhang <zhanghao@wsu.edu>
To: "'Ben Sakkarapope'" <bsakkara@wsunix.wsu.edu>
Subject: RE: How are you?
Date: Mon, 2 Dec 2002 13:15:57 -0800

Ben,

I really do not know what exactly is going on regarding to your appeal. The graduate school did not contact me. But Rob called me a couple of times and tried to clarify your status. From the conversations, I could see that Rob is thoughtful and wanted to help you. I do not know exactly what he said to you. It could be due to his own misunderstanding or incomplete information.

I truly believe that Rob wants to help you within his own power.

I know how important a Ph.D. is to you and your wife. I hope you can still find time to work on your project in statistics. I hope the seminar classwill be helpful to you to conduct the project.

Hao

From: Ben Sakkarapope [mailto:bsakkara@wsunix.wsu.edu]
Sent: Friday, November 29, 2002 2:35 AM
To: 'Hao Zhang'
Subject: RE: How are you?

Prof. Zhang,
Thank you very much for your support. I also just got back from joining a friend's family Thanksgiving.

I do understand Rob's concern, of course, it is my legal status. However, at this point, he gave me contradictory stories within his own words about the I-20 processing.

What he said was not what it says in the INS instruction in regard to the I-20. Also, his info about the Grad. School's letter was not clear. First he said I have been dropped from the program of studies. When I asked for a copy of that letter, he slightly changed the story and did not provide me the copy. Then, he believes I am out of status without specifying what causes that.

As you know my immigration status is mainly relied on my status at the Grad School, therefore, this question has to be clear first. Unfortunately Rob has not provided me a copy of that letter.

For your info, Rob got the letter from the Grad Sch. after Nov 19 and he called me on Nov 22. I believe the probability of these two events to be a coincidence is 0.00000001. Why Nov 19 is critical? There was another event over the Grad. School's and the Provost's Offices, which were directly related to the unsolved issues. I don't know what the administrators communicated with you (advisory committee members), if there is, and what Rob talked to you, and I don't want to ask you either.

I believe the documented facts in my hands do not support the idea that I should make a visit with Rob before I see that letter. Thus, I will not see Rob in person unless he releases a copy of the Grad. School's letter. If you do not agree with me on this, please forgive me.

To date, I have not got any notification of my graduate status from the Grad School. Why did Rob get the letter in confidence? The matter is serious in nature. I need to know exactly what my status at the Grad. School is before any further action/decision. I am not making this decision just simply based on my belief. I have documents to prove against what Rob said to me.

I believe in the openness and trust of the relationship between advisor and student. I put my faith on Rob, but I am in doubt at this point. It is upon his full release information in his hands about me.

As you know, I am not an aggressive person. I have been isolated myself from any confrontation and conflict. However, I have no choice for one issue, my phd matter.

To my study, I have a commitment to myself to accomplish both the doctoral and the master degrees. For the phd, you may laugh at me that it might be just a dream. However, as long as a zero probability is not equal to the impossibility, I will give it a try and do my best.

I will be in your class in this coming Spring sem. I have no intention to hold my status in the program beyond this Spring. I am expecting the issues of my phd will be before the Board of Regents sometimes after New Year if the President has no willingness to solve the problem.

I hope the above information will give you some ideas what I have been up to since my return. Please use email for any contact because my home phone ring is off at all time.

Thank you very much for your support. I hope you have a nice Thanksgiving. Ben

-----Original Message-----
From: Hao Zhang [mailto:zhanghao@wsu.edu]
Sent: Tuesday, November 26, 2002 10:02 AM
To: 'Ben'
Subject: How are you?

Ben,

How are you doing? I hope that you are feeling better.

Rob from the international office called me. He is concerned about your status. As far as I know, Rob is really thoughtful about you and really wants to help you. Please make an appointment to see him. He is the one that tries to help you.

Next semester, I will have a seminar on spatial statistics. I would like to know if you could sit in. Would you like to finish the project next semester?

I have to leave to see a friend off in Spokane. Hope to hear from you soon.

Hao

Hao Zhang, Ph.D.
Program in Statistics
Washington State University
Pullman, WA 99164-3144
Phone:(509)335-2958, Fax: (509)335-8369
http://www.stat.wsu.edu/personal/homepage/zhang

From: Hao Zhang <zhanghao@wsu.edu>
To: "'Ben Sakkarapope'" <bsakkara@wsunix.wsu.edu>
Subject: RE: Hello
Date: Sun, 8 Dec 2002 21:01:11 -0800

Ben,

I read your email again and this time with more care. I am sorry to know your wife's situation. It must be difficult for both of you. I hope everything will be just fine and you and your wife with no longer be separated by sea.

Hao

From: Hao Zhang <zhanghao@wsu.edu>

To: "'Ben Sakkarapope'" <bsakkara@wsunix.wsu.edu>
Subject: RE: How are you?
Date: Wed, 11 Dec 2002 10:24:55 -0800

Ben,

Your recent email made me understand better what you believe. Could you give me a call at 5-2859 today? Thanks. -- Hao
-----Original Message-----
From: Ben Sakkarapope [mailto:bsakkara@wsunix.wsu.edu]
Sent: Wednesday, December 11, 2002 9:19 AM
To: 'Hao Zhang'
Subject: RE: How are you?

-----Original Message-----
From: Hao Zhang [mailto:zhanghao@wsu.edu]
Sent: Sunday, December 08, 2002 8:50 PM
To: 'Ben Sakkarapope'
Subject: RE: How are you?

Ben,
Thanks for the lengthy email. I wish your visa status will not be a problem. I am not clear about the immigration laws. I only wish to see you finish your project soon.

I still cannot understand why you cannot go and talk with the IP to clarify your status. Why not?

Prof. Zhang,

Thank you very much for your time in reading my emails. To your question, why not? I believe the previous CC email I responded to Rob gave you the answer. Rob already acknowledged that he adopted Dr. Grimes' memo and that is what he told to ask/deal with the Grad Sch. by myself. He does not act like a student advisor and communicate with the

officials on the student behalf, especially for his own decision about the student. He does not have willingness to act based on the facts and listen to the student first. I don't want to waste my time to make a visit and listen to what I already know and no favorite solution. He gets a record of providing advice as his job regardless of the outcome, but I waste my time.

I can see the possible solutions from Rob to me: 1) pay more money for tuition to make 10 credits in this Fall, in which I will not take it. Then, 2) in this Spring the Grad will hold my registration, where he will do nothing. 3)Then he will tell me again that I am out of status and have to leave the country because the Univ and Rob will not reinstate my status or face the deportation. I don't see any thing will change their mind sets at the moment. It is a conflict of interest. I believe this is the worse scenario. Personally, I do not believe Dr. Grimes can achieve his hidden agenda.

However, to play safe, it will not make much different what the Grad Sch and Rob will do and impact on my status. In the worse scenario, the INS will come to pick up and try to deport me as their wishes. I hope the University has a good explanation to the immigration judge during the deportation process. The INS will see how the Univ actually do in compliance with the law, which I believe it is a good thing. If I can prove my case against the University, it will be another good story.

If they cannot answer my questions as I am asking Rob now, I don't see a reason I have to worry and waste my time to think about this.

Also, I can have full time to work and think about my stat project in jail in this Spring. The deportation process will take years. It might be a good idea also because I don't have to pay for rent and food. When include tuition, it is a lot of

money. It wil not make much different to my life because my way of life ıow is not much different from being in jail.

So, I still do no see the need to talk with Rob before he receives accura e input from the Grad Sch.

Thank you ver much for your time and trying to understand me.

Ben

From: Hao Zha ıg <zhanghao@wsu.edu>
To: "'Ben Sakk rapope'" <bsakkara@wsunix.wsu.edu>
Subject: RE: A ldditional info
Date: Thu, 12 I ec 2002 10:43:26 -0800

Hi, Ben,

I will be in my ffice in the afternoon perhaps after 1:30pm. Please give me ı call 5-2958 or stop by if you prefer.

Hao

From: Hao Zha ıg <zhanghao@wsu.edu>
To: "'Ben Sakk rapope'" <bsakkara@wsunix.wsu.edu>
Subject: RE: R search project delay
Date: Fri, 13 D c 2002 10:26:13 -0800

Ben,

I sent a mem to the graduate school requesting you be allowed to take hese many credits. Have a good holiday!

Hao
-----Original M ssage-----
From: Ben Sakl arapope [mailto:bsakkara@wsunix.wsu.edu]
Sent: Thursday, December 12, 2002 11:24 PM

To: "Hao_Zhang" <"Hao Zhang"
Subject: Research project delay

Prof. Zhang,

I am writing you to ask for support and help. As I informed you, I intended to complete my research project for my MS and took a final exam in this Fall. Unfortunately, due to the death of my father-in-law that I left the school for his funeral, and some difficulties at home, I could not return soon to have enough time to finish the project as planed. Thus, I would like to postpone our schedule to this Spring instead. This will give me some more time for both my MS research project and another paper for publication (which I discussed with you before).

In addition, since I already completed all coursework in pursuing my MS degree program, I need to enroll under a normal course load for an international student. I don't have any class to take. Thus, I would like you to help me on some paper work with the Grad. School, or as you believe it is appropriate, in regard to my enrollment in this Spring 2003, including this Fall 2002 if necessary.

If you need additional information or if there is a problem in this regard, please let me know.

Thank you very much for help and support.

Ben Sakkarapope

From: Hao Zhang <zhanghao@wsu.edu>
To: "'Benjapon Sakkarapope'" <bsakkara@wsunix.wsu.edu>
Subject: RE: unfortunate circumstance
Date: Wed, 5 Feb 2003 11:04:47 -0800

Ben,

I have not rece ved the letter from Dr. Grimes except the one I forwarded to /ou. What happened?

-----Original M essage-----
From: Benjapc ı Sakkarapope
[mailto:bsakka a@wsunix.wsu.edu]
Sent: Tuesday, February 04, 2003 9:47 PM
To: Hao Zhan
Subject: unfort ınate circumstance

Prof. Zhang,

Per my last co ımunication with you, I intended to meet you early this wee . To date, I believe you already recieved a letter from Dr. Grimes. It gave you an answer why I have not yet come to s e you. It is an unfortunate circumstance. I have to deal wi h Dr. Grimes seriously.

I have no choi e to postpone our academic schedule. If the matter is not cl ared up, it will be wasting your time with my project.

Please accept n y apology for any inconvenience.

By the way, pl ase let me know your class meeting time. I will try to atten l as planed.

Thank you ver much for your support.

Ben

Summary of Rules and Violations*

I. Main Codes

1. Graduate Student Code (GSC):

1.1 Graduate Student Rights: "To be governed by clearly stated and justifiable academic procedures, rules, and regulations" [GSC, p. 2]. "To be accurately informed of program requirements and expectations upon enrollment" [GSC, p. 2].

1.2 Expectations of Department and Programs [GSC, p 4-5].

1.3 Expectations of Faculty Advisors and Mentors [GSC, p. 5].

I believe the way Dr. Duft handled my preliminary examination violated my graduate student rights, and did not meet the expectations of departments and programs as well as the expectations of faculty advisors and mentors as stated in the Graduate Student Code. I believe the major violations as presented caused the failing result of my preliminary examination.

2. Faculty Code of Professional Ethics [Faculty Manual, p. 25]. I believe the conduct of a faculty is in question with regard to the Faculty Code of Professional Ethics.

II. Rules of the Preliminary Examination

1. "The preliminary examination contains both written and oral portions" [IIDP handbook, p. 15].

1. The preliminary examination contains both written and oral portions.

2. The preliminary examination is also subject to the IIDP handbook and the student's program proposal approved by the Graduate Studies Committee.

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* Submitted before the CGSRR, September 1, 2000.

2. "It is the prerogative of the advisory committee to talk with the student and determine the actual format of the examinations, subject to Graduate School regulations" [IIDP handbook, p. 15].

The committee chose this prerogative by discussing with the student the actual content and format of the examinations in May 1999. The actual contents and format of the preliminary examination was established as the document called " the Proposed Content and Format of the Preliminary Examination."

3. "the committee members from various disciplines should collaborate in writing of examination questions. The preliminary examination should cover all of the student's interest area's of study."

4. "The committee members may want to write individual questions based upon their specific expertise, drawn from the examination reading list the committee has agreed upon for the student to study. The committee may then gather (without the student), bringing with them their individual questions. The committee will then proceed to select and/or compose questions for the examinations, ensuring all of the areas for which the student is responsible are covered" [IIDP handbook, p. 15].

I believe the chairperson did not instruct the committee to follow the guideline in writing constructive examination questions for both written and oral portions. The integrity of the examinations was in questions with regard to justifiable academic procedures and criteria.

5. "The chairperson will first ensure that the committee members and student agree upon a reading list for preliminary examinations, as well as on a date for the written and oral examinations" [IIDP handbook, p. 16].

The chairperson did not meet his responsibility to administer the preliminary examination according to the agreed content and format of the examination. The incidence caused the changes in the contents of both written and oral examinations violating the agreed content and format of the examination, and then yielded disadvantage to the student's preparation for the examinations. The advisory committee did not grant the changes in the content of the examination.

6. "The chairperson will call any necessary meetings of the committee (without student) to draft or review the written portion of the examination" [IIDP handbook, p. 16].

Incidents:

1). The committee had two meetings: October 19, 1999, to draft the exam questions and the week following the January written examination to review the written portion of the examination.

2). The chairperson denied the student's request to call for a committee meeting to consider the student's concern and reevaluate the written examination before the oral examination.

Violation and consequences:

The ignoring of the student's concern and request with regard to the evaluation of the written preliminary examination results in two main consequences:

(1) Unnecessary extraordinary stress before the oral examination caused a severe physical heart condition for the student. This resulted in a disadvantage in the student's preparation for the examination.

(2) The entire committee misperceived the proper procedure of the preliminary examination and the true result of the evaluation of the written examination. Then, the misperception of the procedures and the true written examination result mislead the advisory committee in evaluating the oral examination and the total performance of the preliminary examination.

7. "The student should initiate conversation with his or her committee at least six months before the preliminary examinations will take place to develop a reading list with which he or she can prepare for exams" [IIDP handbook, p. 17].

Incidents:

1). The conversation was initiated in April-May 1999. The reading list was agreed upon as indicated in the document, Proposed Content and Format of the Preliminary Examination.

2). The reading list was used to guide the student to prepare for the exam in May 1999, but the examination did not follow the agreed reading list.

Violation and consequences:

It is morally practiced to allow at least six months to prepare for the exam. The changes in the contents of the exams violated commonly accepted standards of morality.

III. Rules of Written Examinations

1. "The committee may be guided by an examination format normally utilized in the chairperson's department, introducing alterations in that format as appropriate for the individual student" [IIDP handbook, p. 15].

Incidents:

1). The examination format was alternated as appropriate for the student as indicated in the document, the Proposed Content and Format of the Preliminary Examination.

2). The agreed examination content and format were not followed. The contents of the examination were changed two times in less than two months before the January 12, 2000, examination.

3). I believe the evaluation criteria and procedure did not follow the common practice of examinations in the Department of Agricultural Economics.

Violation and consequences:

Any rule, procedure, and academic criteria with regard to the preliminary examination should follow the common practice of the Department of Agricultural Economics if the advisory committee did not introduce alterations in that rule, procedure, and academic criteria as appropriate for the student before the examination proceeded.

2. "All of the committee members evaluate the written examination, and communicate with the chairperson the results of their evaluation" [IIDP handbook, p. 16].

Incidents:

1). The chairperson did not instruct all committee members to evaluate the written examination. Instead, only three committee members evaluated his/her own written exam questions. One portion of the exam was given and evaluated by a faculty who was not a committee member.

2). The constructive and justifiable criteria for evaluating the January written exam and the total performance of the written examination were not established before the evaluation could proceed.

3). The evaluation of the total performance of the written examination did not include the credits of the two portions of the written examination -- Microeconomics core exam, Dept. of Economics and Economic theory, Dept. of Agricultural Economics.

Violation and consequences:

(1). The evaluation criteria should follow the practice of the Department of Agricultural Economics since three of the six committee members are in the department.

(2). The requirement that "the preliminary examination should cover all of the student's interest areas of study" has not been fulfilled without the credits of the two portions (Microeconomics core exam and Economic theory).

(3) I understood that I was granted 50% credit toward the satisfactory result of the written preliminary examination prior the January written examination. Therefore, I believe there was no possibility that the total performance of the written preliminary examination was unsatisfactory.
(4) I believe the unsatisfactory result of the written preliminary examination was not reached by the agreed content and format of the examination, and the justifiable academic criteria.

VI. Rules of Oral Examination

1. "The oral examination is conducted by the entire committee and a representative of the Graduate Studies Committee " [IIDP handbook, p. 15]. All were present during the oral examination and then disappeared after the deliberation of the total performance of examination. Dr. Duft remained after the deliberation.
2. "During the oral examination, the student may be asked to address any questions remaining after committee members have read the written examination, any related scholarship, and if appropriate, the student's future research plans" [IIDP handbook, p. 15].

Incidents:

1). Three committee members read and graded their written exam questions, which they wrote.
2). The other committee members (three) did not have an opportunity to read the written examination and participate in composing the oral exam questions before the oral examination.
3). The oral exam questions were not drawn from the examination reading list the committee had agreed upon for the student to study.
4). There were no direct questions representing Economics and Agricultural Economics.
5). Two committee members did not ask any questions.

6). Majority of the oral questions were involved with the content of the U.S. Farm Credit System and Finance Theory.

7). One committee member did not participate in the written examination portion, but participated in the oral examination and the evaluation of the total performance of the preliminary examination.

Violation and Consequenses:

1). All committee members did not read and review the written examination portion before the oral examination.

2). The oral examination did not cover all the student's interest areas of study; since the committee may ask any questions during the oral examination, this also implies that the committee already was satisfied with the performance of the areas not covered/asked in the oral examination.

3). The result of the evaluation of the written examination portion did not meet the academic standard and integrity of the written examination as guided by the IIDP handbook, therefore, the evaluation of the oral examination and the total performance of the preliminary examination were misleading.

4). The committee was the body establishing the examination standard and should therefore be obligated to follow its established standard. The evaluation of the content beyond the scope of the agreed content and format of the examination as well as the program of study to failing the student's total performance of the preliminary examination was not morally and legally justified.

3. "Discussion of the performance should be encouraged" [Instructions for conducting oral examination, p. 1]. The post-examination deliberation and voting procedure took approximately 15-20 minutes. I believe the deliberation was not scrutinizingly and thoroughly performed with respect to

the appropriate means and justifiable academic criteria/procedure.

4. "The Representative of the Graduate Studies Committee shall count the ballots but shall announce the result without divulging the number of ballots marked 'pass' or 'fail' [Instructions for conducting the preliminary examination for the doctorate: Oral examination, p. 1]. The Representative and all other committee members disappeared, except Dr. Duft. The Representative, Dr. R. Alan Black, did not announce the result of the preliminary examination.

Violation and Consequences:

1). The dismissal of the Representative and the committee members were suspicious. This dismissal also violated the moral standard of conducting the preliminary examination. If the deliberations and decision had been made in good faith and based on the academic integrity, there was no reason to fear facing the student with a failing result.

2). The announcement of the result of the examination is to be made in front of both parties, the examiners and examinee. The instructions for conducting the preliminary examination states the Representative shall count the ballots and shall announce the result.

V. Graduate School Policies and Procedures

"A student who has failed two preliminary examinations may not become a candidate for the doctorate and the student's enrollment in the Graduate School will be terminated" [Graduate School Policies and Procedures, page 14].

Incidents:

1). The Graduate School's letter dated April 26, 2000, informed me that I was being dropped from WSU because I had failed the preliminary examination for a second time.

2). The Graduate School sent me a corrected copy of the April 26, 2000, with an unpublished policy, "students who have failed the preliminary examination and are not recommended for a second examination can no longer pursue work leading to the doctorate." I believe this policy was not established by the Graduate Faculty at WSU. There was no explanation and information from the Graduate School with response to my letter date May 4, 2000.
3). On March 29, 2000, Dr. Karen DePauw acknowledged my appeal of the result of the preliminary examination and my appeal was brought before the Graduate School on April 19, 2000.
Violation and consequences:
1). The Graduate School action of dropping me from WSU while my appeal process and relevant facts remained unanswered, has generated extreme emotional stress and psychological impact on my daily life.
2). I am concerned and questioned the ethical procedure with regard to my appeal.

VI. Adjudication of Rights and Responsibilities

"Strictly academic issues brought before the Graduate School are typically handled by the Assistant and Associate Deans of the Graduate School, with appeals made to the Dean of the Graduate School." "Unusual academic matters and some combinations of conduct and academic matter may be referred to the Committee on Graduate Student Rights and Responsibilities." "Once allegations are brought to the Graduate School in writing, the CGSRR will be formed within 30 days and will deliberate and render a recommendation within 60 days."

Incidents:

1). The Graduate School did not form the CGSRR within 30 days as of April 19, 2000.

2). The Associate Dean, Dr. Hill, reviewed and deliberated by himself and denied my appeal on behalf of the Dean of the Graduate School.
Violation and consequences:
1). I am concerned whether my appeal has been treated fairly and properly since February 11, 2000.
2). With respect to the Graduate Student Code, I am in question whether my graduate student rights have been violated and whether the expectations of the department and program have not been met. I also question whether the expectations of faculty, advisors, and mentors were met.
3). The way my appeal has been treated, creates emotional stress and psychological impact on my normal life as well as my focus of study.

Summary of Events*

Date	Events	Critical Note
Spring & Fall 1998; Spring 1999	Took required classes for IIDP: UNIV 591 Interdisciplinary Seminar in Spring 1998, UNIV 598 Seminar in Interdisciplinary Studies in Fall 1998 & Spring 1999. Along with the classes, prepared an IIDP program proposal, under supervision of the IIDP program coordinator, Dr. Gail Stearns, and the chairperson of the advisory committee, Dr. Kenneth Duft.	Prepared program proposal.
March 1999	Program proposal [Attachment #1] was approved by the Graduate Studies Committee, and signed by Dean of the Graduate School. Dr. Gail Sterns, Program Coordinator, informed me of approval via her letter of March 24, 1999 [Attachment #2].	1. Moved out of the Department of Agricultural Economics to be officially a doctoral student in the IIDP. 2. The approved program proposal became the scope of coursework and dissertation for the IIDP.
April 12, 1999	Filed a program of study at the Graduate School. [Attachment #3].	Filed a program for doctoral degree according to the IIDP

* Submitted before the CGSRR, September 1, 2000.

		handbook page 12.
April - May 1999	Initiated conversation with Dr. Duft, chairperson of the advisory committee, with regard to the content and format of preliminary examination.	Preparation for the preliminary examination as guided by the IIDP handbook page 15 & 17.
May 1999	Dr. Duft and I agreed on content and format of the preliminary examination, and I was asked to draft the document called, the "Proposed Content and Format of the Preliminary Examination." Dr. Duft was given this document in both hard and electronic copies [Attachment #4]	Determined the actual format of the examination according to the IIDP handbook page 15.
May 19, 1999	Dr. Duft circulated the document (Proposed Content and Format of the Preliminary Examination) to all committee members via emails to get their approval [Attachment #5.]	The actual format of the preliminary examination was proposed for the advisory committee approval upon the agreement between chairperson, Dr. Kenneth Duft, and student, Mr. Benjapon Sakkarapope.
May 20, 1999	Dr. Fred Inaba gave a positive response to Dr. Duft's May 19, 1999	The approval was confirmed.

	email [Attachment #6]. I also clarified Dr. Inaba's questions with regard to the content of the examination to both Dr. Duft and Dr. Inaba [Attachment #7].	
May 26, 1999	Dr. Holly Wang gave a positive response to Dr. Duft's May 19, 1999 email [Attachment #8].	The approval was confirmed.
June 1999	Met with Drs. Kling and Zhang in person with regard to Dr. Duft's May 19, 1999 email for their approval of the document (Proposed Content and Format of the Preliminary Examination). Both verbally gave me their positive responses.	The advisory committee chose the prerogative to discuss with the student the actual format of the examination with respect to the IIDP handbook page 15. The actual content and format of the preliminary examination was established in May 1999 when the committee members did not oppose the document distributed.
June 1999	Dr. Duft instructed me to prepare for the preliminary examination according to the agreed content and format of the document (Proposed Content and Format of the Preliminary	The document (Proposed Content and Format of the Preliminary Examination) had been the guideline used for my exam preparation since May

	Examination).	1999.
October 19, 1999	The advisory committee met with regard to the exam questions. Dr. Duft reconfirmed the agreement of the content of the examination as proposed in May 1999. The written exam date was arranged for January 12 &14, 2000 [Attachment #9].	The agreement of the reading list for the two remaining written exams was reconfirmed per Dr. Duft's email dated Oct. 19, 1999.
Nov. 5, 1999	Dr. Duft added the content on FCS to the previously approved document, Proposed Content and Format of the Preliminary Examination, to replace the agreed content under the Agribusiness Management, which I was studying to date. He gave me two books on the FCS to study for the exam.	Two-thirds of the content of the written exam on the Agribusiness Management and Marketing was replaced by the FCS. This replacement of the content of the exam violated the agreed document, Proposed Content and Format of the Preliminary Examination.
Nov. 18, 1999	Dr. Han agreed to serve as an advisory committee member replacing Dr. Kling. She informed me that the Finance exam portion would include both Finance Theory and Empirical Method in Finance. This again was	The change in the content of the exam portion of Finance violated the agreed document, Proposed Content and Format of the Preliminary Examination. The Empirical Method in Finance was not part

	in violation of agreed content and format of the Finance portion.	of the agreed content and format established in May 1999.
January 12, 2000	The remaining written exam was given on the portion of Finance.	The two remaining portions of the written examination were given. There were four portions of the written exams; the two portions covering the Dept. of Economics and the Dept. of Agricultural Economics were already granted credits toward the satisfactory results of the written examination as stated in the agreed document, Proposed Content and Format of the Preliminary Examination.
January 14, 2000	The remaining written exam was given on the portion of Agribusiness Management and Marketing [Attachment #10].	
January 26, 2000	Dr. Duft verbally informed me the result of the written preliminary exam was unsatisfactory.	I met with the committee members and realized the discrepancies in the evaluation of the written prelim examination.
January 31, 2000	I expressed my concern and appealed the result of the written examination in writing to Dr. Duft as the chairperson of the advisory committee	My request to reevaluate the result of the written prelim exam was refused by Dr. Duft.

	[Attachment #11].	
February 11, 2000	The oral exam was given. At the end of the oral exam, the evaluation result of the total performance of the preliminary examination was verbally given to me by Dr. Duft. Later that same night (February 11, 2000), two committee members called me at home to express their sympathy to my situation.	The oral examination committee disappeared after the end of the oral questioning. I was not called back into the room to be informed of the result of the total performance of the preliminary examination as standard practice.
February 15, 2000	I appealed the result of the preliminary examination in writing to Dr. Karen DePauw as the Chair of the IIDP [Attachment #12].	I was told to check back after three weeks.
March 29, 2000	Dr. Karen DePauw told me to bypass her review and follow the appeal process at the Graduate School level with full detail of the case.	
April 19, 2000	The appealing document with full detail was brought before the Graduate School in writing via the Associate Dean, Dr. Herbert Hill [Attachment #13].	
April 24, 2000	Met with the Associate Dean, Dr. Herbert Hill.	I was told that he would review the case

		carefully and make a recommendation within a week.
April 26, 2000	The Graduate School sent me a letter informing me that I was being dropped from WSU. I received this letter on April 28, 2000 [Attachment #14].	Postmark dated April 27, 2000. The letter was not consistent with the facts.
April 27, 2000	The Graduate School sent a corrected copy to the April 26, 2000, letter. Correction referred to Graduate School policy change. I received this letter on May 2, 2000 [Attachment #15].	Postmark dated on May 1, 2000. The referring policy is not published in any Graduate School document; it is in question.
May 1, 2000	I expressed my concern with regard to the accuracy of the April 26, 2000 letter [Attachment #16].	
May 4, 2000	I expressed my concern with regard to the accuracy of the April 27, 2000 letter and requested the information and explanation from the Graduate School [Attachment #17].	
May 4, 2000	The Dean of the Graduate School responded to my letter of May 1, 2000. I received this letter on May 9,	Postmark dated on May 8, 2000. No response to my letter of May 4, 2000.

	2000 [Attachment #18]. Questions remained unanswered.	
May 19, 2000	The Associate Dean, Dr. Hill, sent me a letter of his review. I received this letter on May 25, 2000 [Attachment #19].	1. Postmark dated on May 24, 2000. 2. The date of May 19, 2000, was exactly 30 days since the appealing case was brought before the Graduate School. His letter did not provide sufficient analysis and explanation. 3. The Graduate School did not form the CGSRR within 30 days with respect to the Graduate Student Code page 8-9.
June 9, 2000	I appealed Dr. Hill's decision as stated in his letter dated May 19, 2000 [Attachment #20].	
June 14, 2000	Dr. Hill informed me he was out of town until June 26, 2000 [Attachment #21].	Postmark dated on June 15, 2000.
June 28, 2000	Dr. Hill, Associate Dean, informed me of his second review and suggested I appeal his decision to the Dean of the Graduate School [Attachment #22].	I received this letter on July 7, 2000.
July 12, 2000	I appealed the Associate Dean's decision with	

	regard to my appeal to the Dean of the Graduate School [Attachment #23].	
July 14, 2000	The Dean of the Graduate School informed me that my appeal was referred to the CGSRR [Attachment #24].	Postmark date July 14 and I received it on July 17, 2000. This letter brought up three relevant issues.
July 24, 2000	I expressed my concern with regard to the Dean's letter dated July 14, 2000 [Attachment #25].	No response to my concern.
August 10, 2000	The Graduate School informed me that the CGSRR was formed [Attachment #26].	Postmark date August 10, 2000 and I received it on August 11, 2000.

Dear Prof. Duft,

On Thursday January 27, 2000, I met with Dr. Holly, Dr. Zhang, and Dr. Wandschnieder, as well as with you on Wednesday January 26. I also tried to meet with Dr. Inaba and Dr. Han on Friday January 28, but they were not available.

Because of concerns and unanswered questions in my mind, I stopped by your office on Friday January 28 between 1 and 3 PM to receive from you needed advice and clarification.

In order to concentrate and prepare for the oral exam well, I will stop by on Monday (January 31) hopping your schedule will be free, to discuss the committees' evaluation of my written preliminary exam.

I am also writing to help verify what I analyze the situation to be.

Above all, I would like to express my appreciation to all committee members for the opportunity to achieve my Phd and for their help.

In November 9, 1999 (if my last recollection of the date is correct) the committee met and received a copy of the Proposed Content and Format of the Preliminary Examination, which I prepared after I had discussed with you, at that time. The contents and format of the exam were agreed upon except for and changed, i.e.: 1) no take home exam, 2) no MBA courses and courses in master program level, and 3) the exam dates change.

The committee also approved that I would receive credit for the Microeconomic Core exam (Econ Dept.) and Economic Theory exam (Ag. Econ Dept.). I already passed as part of my written preliminary exam with a 50% satisfactory result.

The remaining exams for the written preliminary exam included Finance Theory and Agribusiness Management and Marketing.

It was my understanding that empirical methods in finance would not be a part of the written exam as outlined

by the committee with Prof. John Kling who represented the Department of Finance at that time.

Since then Prof. Han has replaced Prof. Kling and informed me in the week before WSU final exams that empirical methods would be tested. She stated to me at that time she did not want to discuss any negotiation with you for me and was following what Prof. Kling had told her. This I do not understand as empirical methods was not to be part of the exam as per the November 1999 committee meeting of which Prof. Kling participated and agreed on the contents of the exam. Nonetheless, the committee still included the empirical methods in finance in the evaluation of the written preliminary exam.

Secondly, I do not understand why credit for the two main portions of the written preliminary exam have not been credited giving me a 50% satisfactory result prior to the January exams. Although the results of the January exams have not been clearly explained to me in the proportion of percentage received, I strongly believe when all components are considered my pass rate would be within the "Pass" range and therefore satisfactory.

Because the preliminary exam result is most important to my success in the Phd program I would like your consideration in what I perceive as discrepancies of rules and procedures. The Phd is the only reason I left my country seven years ago. The Phd program is not only a dream but the key to my future, therefore, it is vital that I clearly understand my current status before taking my oral exam.

Your advice and understanding how vital this is in my culture is needed before my oral exam.

I wish to extend my sincere gratitude and thank you for both the past and future support on my behalf.

Sincerely,
Benjapon.
1/31/2000

430 NE Oak #2,
Pullman, WA 99163
Phone 332-8911

February 15, 2000

Dr. Karen DePauw, Chair
Individual Interdisciplinary Doctoral Program, WSU
Pullman, WA 99164

Dear Sir,

I would like you to review the result and procedure of my preliminary examination because I believe several serious discrepancies had been ignored during the process. I am also writing to help me clarified what I had gone through.

1. After my written exam in January, I was informed that my written exam result was unsatisfactory. I have realized two major discrepancies of rules and procedures (see my statement attached, January 31, 2000). On January 31, 2000, I did make a request to my committee chair in order to resolve the discrepancies before scheduling the oral exam. Unfortunately, he was unhappy about my concerns and reluctant to call for a committee meeting. I was told that I must schedule the oral exam not later than February 11.
2. As the result of the committee chair's reaction to my concerns, I was under a tremendous pressure and stress, which I have never had before. Because of my heart condition, the pressure is beyond my mental ability to handle it. Then, I have been under doctor care and on medication since February 3, 2000. If you would like to verify or discuss about my heart condition, you feel free to contact Dr. Linda Fearn at the WSU Health and Wellness Services, phone 335-3575.
3. I was informed that the result of my preliminary examination was unsatisfactory because my performance in finance portion was not acceptable. If the finance

portion were a small portion of my research, it would be acceptable. The committee perceived that my research was heavily weighted on financial analysis. I feel that the perception of my research direction is not consistent with my program proposal as approved by the Graduate School, which is heavily weighted on the economic portion. The structure of my dissertation and conceptual framework of study were already laid out clearly in the program proposal.

4. An oral preliminary examination is already stressful to any student by its nature. During my oral examination, the atmosphere was discouraging to me. It gave me extra pressure and severely psychological impact on my heart condition. I almost stopped the procedure because I felt I could not handle the situation anymore. My normal ability was paralyzed; I had a feeling, but my brain was not functioned and comprehended as I am in a normal stage. The circumstance inhibits my ability to perform well in the exam. If there were no unnecessary pressure, I would have performed much better. Also, without the medication, I would not have been able to carry my body through the oral exam.

Without the discrepancies, psychological impact, and personal health condition, I would have met the minimum expectation to pass the preliminary examination.

I learned from Dr. Stearns that an IIDP student is able to have three attempts to schedule for the oral exams. I would like to change the composition of my graduate advisory committee in order to move forward. Also, I would like you to advice me whether my preliminary exam is complete and what I should be able to do next.

I would like to thank you for both advice and support.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

Benjapon Sakkarapope
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April 19, 2000

Dr. Karen DePauw
Graduate School, Dean.
Washington State University
Pullman, WA 99164

Dear Graduate School Dean, Dr. Karen DePauw:

I would like to appeal the result of my preliminary examination to the Graduate School. I am a doctoral student in the IIDP program and took the written examination on January 12 and 14, 2000 and the oral examination on February 11, 2000. I have not been informed, in writing, the result of either the written or oral examination yet, but was verbally informed the result of the preliminary examination by Dr. Kenneth Duft, Chair of the advisory committee on Friday 11 February 2000 after the oral examination was ended.

On Wednesday 26 January 2000, Dr. Duft verbally informed me the result of the written examination and that the written preliminary examination was unsatisfactory. Dr. Duft explained the reasons why the result of the written examination of his portion was unsatisfactory and that it was not because my answers were incorrect. My answers were correct, but lacked in depth and breadth as well as collaboration. For the explanation on the other parts, he suggested I contacted Dr. Wang and Dr. Han, who wrote and graded the exams, individually. He also told me to schedule for the oral examination within 30 days.

On Friday 11 February 2000, Dr. Duft verbally informed me the final result of the preliminary examination,

that I had failed the preliminary examination. He gave me two reasons:

1. The result of my preliminary examination was unsatisfactory because my performance in the finance portion was not acceptable. If the finance portion were a small portion of my research, it would be acceptable.
2. For his portion of the oral exam questions, the answer of the question on how the FCS bonds were sold was incorrect. He stated that "even though the other answers were correct, it took too long time to get the correct answer."

I also asked him what the committee would do for a second attempt as he told me on Friday 5 November 1999 that the committee allowed me to have two attempts. If I failed on the first attempt, I would have another attempt. What Dr. Duft told me at this was time different from what he told me in November 1999; that the committee did not allow me to have a second attempt. I believe that rule of the preliminary examination was not governed by clearly stated rules and procedures. I further believe what was followed depended on chairperson Duft's mood toward me as to the academic standards and integrity he followed.

I disagree with how Dr. Duft handled the preliminary examination and do not accept the result of the graduate advisory committee decision that I was failed on the preliminary examination. I disagree because I strongly believe my graduate student rights had been violated in the process of the preliminary examination. I believe the examination did not meet university academic integrity. Dr. Duft's conduct mislead and inhibited the advisory committee to develop a fair evaluation of the preliminary examination thereby not meeting the academic integrity. My right to be governed by clearly stated and justifiable academic procedures, rules, and regulations has been seriously violated. As a result of the violation of my rights, my examination yielded a failure result; resulted in the disadvantage of personal success in advanced education and

my future career as well as a negative psychological impact on my life. I believe that when my rights are protected and respected, and the procedures are legally and ethically justified, I cannot be failed on the preliminary examination.

I had appealed the result of the preliminary examination in writing to Dr. Karen DePauw on Tuesday 15 February 2000 and was informed to follow up after three weeks (see the attachment #8). I met with Dr. DePauw again on Wednesday 29 March 2000 and was advised to follow the Graduate School appeal procedures. Therefore, I would like to provide all facts relating to the preliminary examination supporting my belief as follow:

1. The preliminary examination process began in May 1999. In Spring semester 1999, I had initiated conversation with Dr. Duft to determine the actual format of the examinations according to the IIDP Handbook. Upon the agreement between Dr. Duft and I, Dr. Duft asked me to draft the content and format of the examination (see the attachment #1). I submitted the Proposed Content and Format of the Preliminary Examination to Dr. Duft for approval in both electronic and hard copy versions on Tuesday 18 May 1999. Dr. Duft had read the proposed content and format of the examination in front of me and informed me that he approved it and did not have any problem with it. Then, on Wednesday 19 May 1999, Dr. Duft sent the content and format of the examination to the other committee members via emails. On his cover letter, Dr. Duft clearly acknowledged his agreement and complete understanding in the content and format of the examination; in particular he directed their attention to the requested exemption relating to two exams I already passed (Economic theory from Dept. of Agricultural Economics and Microeconomics core exam from Dept. of Economics), soliciting approval and consideration from the committee members (see the attachment #2).

Dr. Wang and Dr. Inaba responded to the email and did not oppose the content and format of the examinations. The other members did not respond to the email. I did ask Dr. Duft whether the committee meeting was necessary. Dr. Duft told me that he treated no response as approval and no need to set up a special meeting. I also met with Dr. Zhang and Dr. Kling, in person, with regard to this matter. Both had no problem on the content and format of the examinations. Dr. Kling also expressed that there was no need to have a meeting just for this matter. He would leave the agreement between Dr. Duft, as the chair, and me. Then, Dr. Duft advised me to prepare for my preliminary examination according to the content and format of the examinations, Dr. Duft and I, as well as the committee, were agreed to that content and examination format, as guided by the IIDP Handbook, also.

I realized later, in January 2000, that Dr. Wandschneider neither received Dr. Duft's email of Wednesday 19 May 1999 nor was verbally informed about it by Dr. Duft.

I have understood that the Proposed Content and Format of the Examinations in May 1999 officially and effectively became part of the Graduate School academic procedures and rules governing myself as well as the committee members since that time. I understood that I had at least a six-month period for the examination preparation, according to the agreed content and format of the examination (after the actual content and format of the examination were established as guided by the IIDP Handbook on page 17). I also understand that the committee members are **legally and ethically** obligated to **uphold** the agreed content and format of the examinations as the academic standard of the IIDP as directed by the Graduate School.

It was originally clear understanding and agreement between Dr. Duft and I that the content and format of the examination was initiated by following the IIDP Handbook.

The content of the examination must cover the three interest areas of study drawn from the three departments. On the agreed basis that I am not working on three phd degrees, I should not be tested over the contents of the written exams as a phd student in each degree. Thus, the written examination to meet the academic standard of the IIDP included four separate portions:

(i) Microeconomics Core Exam for economic discipline, Dept. of Economics [There are two exams required for a phd in economics: Micro & Macro Core Exams.]

(ii) Economic Theory Preliminary Exam for agricultural economic discipline, Dept. of Agricultural Economics [There are two exams required for a phd in Agricultural Economics: Economic Theory and Quantitative Methods.]

(iii) Finance Theory for finance discipline, Dept. of Finance [There are three exams required for a phd in Finance: Microeconomics Core Exam, Finance Theory, and Empirical Methods in Finance.]

In addition to the Economic Theory Preliminary Examination in the Department of Agricultural Economics, the Agribusiness management and marketing is not included in the department requirement for that exam. This portion is also not included in any other department preliminary examination. Thus, the forth portion of the written examination includes the content of agribusiness management and marketing.

Since I already took and passed both the Microeconomics Core Exam (Department of Economics), and Economic Theory Preliminary Examination (Department of Agricultural Economics), Dr. Duft and the committee **agreed to grant credits of fulfillment in these two exams as that requirement of my written preliminary examination.** I did not need to retake both portions again. Then, the written examination in January 2000 covered only the two remaining portions, Finance Theory, and

Agribusiness Management and Marketing. **The content and format of the two remaining portions of the examination as well as the reading list for my preparation were actually established as outlined in the Proposed Content and Format of the Preliminary Examination.** The committee members already approved the Proposed Content and Format of the Preliminary Examination in May - June 1999 and it has been used as the basis of the rules and procedures of my preliminary examination including that time. I adhered to it as the guideline to prepare for the examination! Additionally, it has been understood that the committee already granted 50% satisfactory results toward the evaluation of my written preliminary examination **before** the January examination took place.

I assumed that all committee members **thoroughly considered and clearly understood** the content and format of the preliminary examination in May 1999 as Dr. Duft and I were agreed upon in the first place. It is the first and most crucial step of the examination, according to the IIDP Handbook. The preliminary examination cannot proceed without the establishment of the actual content and format of the examination. All the committee members were provided with the IIDP Handbook and my program proposal when the advisory committee was initiated. If there is any miscommunication and discrepancy relating to it, it is the responsibility of the chair of the graduate advisory committee to clarify and remedy or take further appropriate action to protect the student' s right and academic integrity, according to the IIDP Handbook on page 15-16.

2. On Tuesday 19 October 1999, I received an email from Dr. Duft informing me of the result of the advisory committee meeting that " the advisory committee had agreed to set your written exams. Your examination in the field of Finance/Finance Theory will be prepared by Dr. Kling and issued you on Jan. 12. You examination in the field of Agribusiness Finance/Marketing will be prepared by Dr.

Wong and I, and will be issued you on Jan. 14. Each will be a 4 hour written examination containing three questions" (see the attachment #3).

On Friday 5 November 1999, I met Dr. Duft and he informed me that the committee had a meeting, without my presence on Tuesday 19 October 1999, regarding the examination questions. He also informed me that there were some changes on the content and format of the written examination. The changes were: 1) no take home exam, 2) no MBA courses and courses in master program level, and 3) the exam dates change. Also, I would have two attempts ... taking the preliminary examination.

The written examination for the two remaining portions was scheduled on 12 and 14 January 2000. Dr. Duft also informed me that the examination portion of Agribusiness Management and Marketing included three questions, one drawn from agricultural marketing area written by Dr. Wang and three drawn from the content of the Farm Credit System (FCS, an institution) written by Dr. Duft (one choice from the two).

For his portion, Dr. Duft lent me two books, the 13th Bank by Homer G. Smith (1976) and the Fall of the Farm Credit Empire by Ben Sunbury (1990), to study for the examination. Both books do not actually cover the contents of the examination questions (see attachment #4). This part of the content, the FCS, was not drawn from the reading list under the portion of agribusiness management and marketing. It is also not part of any course of my coursework as approved by the Graduate School. Dr. Duft said, the reason to replace the content of agribusiness management with the content of the FCS on the exam was that it was related to my future dissertation.

Moreover, in the Spring semester 1999, I did ask him for permission to advance in my research before the preliminary examination, and proposed to have an oral preliminary examination in the format as the Dept. of Economics and Agricultural Economics normally practice.

He did not agree with me. Dr. Duft did not allow me to work on my dissertation unless I passed the preliminary examination. I did not understand his reason to test my knowledge on this part of the FCS since I was not allowed to work on my research and it is not part of my coursework at WSU. Also, the FCS is not a main portion of my proposed dissertation. It is just 20% or 1/5 of the first section of my dissertation content; there are three main sections in my dissertation content structure (see the attachment #5—program proposal page 12).

I do not understand and follow Dr. Duft's rationale that the content of exam under the agribusiness management and marketing portion was replaced by the content of the FCS, which is possible knowledge I may need for my future research and is out of the scope of my knowledge learned from WSU coursework. I am supposed to be tested within the framework of my program coursework to fulfill the IIDP requirement. I was not!!

Since I was guided by the content and format of the examination in May 1999 to prepare for the examination, it was the ongoing process and the committee at the October meeting was not supposed to impose any change that gave me disadvantage for my exam preparation. The meeting **was not supposed** to make any change in the content and format of the examination. The change was not legally and ethically justified. I had been guided to study the contents for four months, which were excluded later from the examination and the new content of the FCS was added on approximately two months before the exam date. This change also violates the academic and constructive guideline of the IIDP Handbook on page 17 that a student has at least six months for examination preparation as well as the student right to be governed by clearly stated and justifiable academic procedures, rules, and regulations.

I believe the test on the portion of the FCS was not legally and ethically justified. I am not sure whether the

change in this content of the exam was approved by the committee or, was initiated by Dr. Duft's personal interest.

On Monday 15 November 1999, Dr. Kling requested me to have Dr. Han replace him on serving as an advisory committee member (see the attachment #6). I met with Dr. Han on Thursday 18 November 1999 and she agreed to serve on my advisory committee in place of Dr. Kling. Dr. Han informed me that the finance portion of examination would include both Finance Theory and Empirical Methods in Finance with two questions drawn from each part. I did realize that this composition of the content of the finance exam portion was not consistent with what I was told and the agreed content and format of the examination, which the committee had already approved before. I explained and presented her a copy of the content and format of the examination. She stated to me at that time she did not want to discuss any negotiation with Dr. Duft for me and was following what Prof. Kling had told her. This I do not understand as empirical methods **was not** to be part of the exam as per the May 1999 agreement and October 1999 committee meeting of which Prof. Kling participated and agreed on the contents of the exam. However, I did not make any dispute further since I was not in the committee meeting and kept the professor words within my own deep frustration. I was not a finance phd student and the advisory committee and I did not initiate for examination of the Empirical Methods in Finance. I had tried my best to follow the professor mandates to study for the examination.

The content of the finance examination had been changed just approximately less than two months before the examination date. I had not prepared before for this additional content, the Empirical Method in Finance, since it **was not agreed part** of the examination. By the nature of the Empirical Methods, almost, no normal student can pass the exam with only two-month preparation. This added-on content of the finance examination also seriously violates the academic and constructive guideline of the IIDP Handbook

that a student has at least six months for the examination *preparation as well as the student right to be* governed by clearly stated and justifiable academic procedures, rules, and regulations.

On Thursday 13 January 2000, I met with Dr. Duft and expressed my concern with him why the advisory committee did add the Empirical Methods in Finance to the content of finance theory examination and he did not inform me before. Dr. Duft stated that the committee did not impose any additional content on the finance examination. "It was the communication problem between Dr. Han and Dr. Kling and there was nothing he could do about it." However, I told him that I have disadvantage from this miscommunication and **it was not my mistake**. Am I incorrect in believing the chairperson's priority is to ethically support me? As the result, I was not able to do the exam well because I did not have enough time to prepare for these kinds of questions. The questions on the Empirical Methods in Finance were too specific on specific journal articles and asked for the details in a specific published article. I did not expect to have these kinds of questions with a preparation time less than two months. To be able to answer this type of questions requires much more time to prepare for the examination; two-month period of preparation is fairly not enough. Also, I was not allowed to keep the finance exam questions; the other exam questions I was given but not the finance portion.

I also asked Dr. Duft, as the chair of committee (before the committee met to evaluate my written examination), to represent me to remedy the discrepancies during the evaluation process of the written examination in the later week. However, in fact, Dr. Duft ignored my request and did not bring up this issue for the committee consideration. Am I incorrect in believing the chairperson's priority is to ethically support me? The committee still included the Empirical Methods in Finance in the evaluation of the written preliminary exam. The Empirical Methods in Finance are not supposed to be evaluated counting toward my

written exam evaluation because it was an error in the examination process.

3. On Wednesday 26 January 2000, Dr. Duft verbally informed me the result of the written preliminary examination as I stated earlier above. I had reviewed the situation I was facing for several days and met with some faculty members. I had realized that there were some discrepancies in the written examination evaluation process that needed clarification and resolution **before** scheduling for the oral preliminary examination.

4. On Monday 31 January 2000, I appealed the result of the written examination to Dr. Duft in writing with both hard copy and electronic versions (see the attachment #7). He first responded to my letter of appeal that he did not have any knowledge I took the Economic Core Exam before. I told him that we already discussed about the Proposed Content and Format of the Examination before in May 1999, which he already approved and then distributed it to all committee members via emails in May 1999. I presented him a hard copy of the document, which was clearly stated, to support my statement. Then, he said, "well I cannot give you a credit twice because both Economic Theory in the Dept. of Agricultural Economics and Microeconomics Core Exam in the Dept. of Economics are the same." Then, he said "you failed on two portions—Finance and Agri-Business & marketing, therefore, failed on the written exam."

With regard to the discrepancy in the finance examination, Dr. Duft stated that, "I have nothing to do with it because it was not my fault. It is the miscommunication between the two professors." Dr. Duft also stated that he and the other committee members had not seen even the finance exam questions; just got the result from Dr. Han. The committee members did not evaluate the answer to the empirical method question, but accepted the evaluation by the other faculty in the Dept. of Finance. Each faculty

member evaluated my written examination only on the question he/she prepared. Dr. Duft ignored my request to him on Thursday 13 January 2000 to bring up this problem in the evaluation process of the written examination to remedy the discrepancy because the Empirical Method was not supposed to be part of my written examination.

I could not believe my eyes and ears that I received a hair-splitting and word-game-playing explanation from my professor who I gave most respect to. I believe his excuse was not grounded on academic integrity and honesty. In fact, it was not true that both Economic Theory and Microeconomics Core Exam are the same. They are different in course materials covered. They cannot be used to substitute for each other. Economic Theory in the Dept. of Agricultural Economics covers AgEcon 502, 503, 540 &511, and Econ 501, but Microeconomics Core Exam in the Dept. of Economics covers Econ 501 and 503. Also, the academic standard and expectation of the exam subject with the same course—Econ 501 are not the same, dependent on each department policy. Both exams are also designed for students in different degree programs, who are required to fulfill and meet the different sets of academic standard and expectation.

Dr. Duft denied my request in writing for reevaluating the written preliminary examination according to the content and format of the examination, which we were all agreed upon, and the discrepancies I brought up. I believe he did not proceed the examination by following the university procedures and rules, but also neglected his responsibility as the chairperson, according to the IIDP Handbook page 16 to take proper action to correct the discrepancies. He did not either call for a committee meeting or try to communicate with the other committee members to resolve the important issues of the written examination **before** the oral examination.

I believe the academic integrity of the written examination and my student right have been violated. It can be summarized as follow:

(1). The content and format of the written examination did not follow the agreed content and format of the examination. It is the chairperson responsibility to ensure that the committee members and student agree upon a reading list, scope of the content, and format for preliminary examination, and that all must proceed according to the established procedures and rules. During the ongoing procedures, no one can make any change or impose any extra rule yielding disadvantage to the student in the examination or violating the agreement and the established procedures and rules of the examination.

(2). The evaluation of the written examination was not ensured to follow the IIDP Handbook and the well-established and justifiable academic procedures. The IIDP Handbook on page 16 indicates the responsibility of the committee that "all the committee members evaluate the written examination, and communicate with the chairperson the results of their evaluation." Dr. Duft violated the IIDP procedures by not having all committee members evaluate my written examination independently and combine their result of evaluation for the final result with constructive evaluation criteria. The exam questions were supposed to be written with the answer key and distributed to all committee members with the student answers for individual evaluation.

The IIDP Handbook on page 15 states clearly that, "the committee may be guided by the examination format normally utilized in the chairperson's department, introducing alterations in that format as appropriate for the individual student." Since three of the advisory committee members come from the Dept. of Agricultural Economics, and I moved beyond the department to the IIDP from the Agricultural Economics, it is expected that the advisory committee follow a set of evaluation criteria and procedures of the Dept. of Agricultural Economics. All members of the

examination committee review the written examination separately and provide the results of their evaluation question by question with a constructive result (for each question: 1 = pass, 0.5 = marginal pass, and 0 = fail). Then, the final result of each paper/portion is judged by the average result. Also, students are provided with a written explanation of the failing result for each particular question as well as overall result in writing. I do not see how the evaluation criteria and procedures Dr. Duft had followed, is more clearly stated and justifiable, and superior than the well-established evaluation criteria and procedures of the Dept. of Agricultural Economics. The evaluation criteria and procedures of the Dept. of Agricultural Economics are also consistent with the IIDP Handbook. After the written examination, I have not been informed in writing of the result of my written examination and the explanation of resultant failure.

(3). The changes in the contents of the written examination during the ongoing process of the examination violated the IIDP guideline and student rights, and were not justifiable academic procedures. The changes in the content that gave me less than six months to prepare for the examination violated the IIDP guideline and the May 1999 rule of the content and format of the examination, which was established by the same advisory committee. The replacement of the content of agribusiness management with the content of the FCS was not a justifiable academic procedure because the FCS is not part of my graduate coursework at WSU that I was not supposed to be tested on. I believe it served only Dr. Duft's personal desire and hidden objective. The changes were **not** legal and ethical.

The Empirical Method in Finance was added on because of miscommunication among the committee members. The change was also not legally and ethically justified. It is the responsibility of the chairperson to ensure all committee members and students understand all rules and procedures that have to be followed to meet the academic integrity and standard of the university. If there is any

discrepancy violating the rules and procedures, or any agreement, it is the responsibility of the chairperson to take an appropriate action to remedy and correct the error immediately before the next procedure can proceed. I had brought up all the issues in a timely manner to the chairperson soon after I realized there existed such a discrepancy in the process, and they were not only all ignored intentionally, but Dr. Duft was responding to them with an unhappy and upset appearance in the countenance of his face. Within my culture the facial appearance speaks volumes and the truth by the speakers.

The failing result of the written examination was grounded on the incomplete and biased evaluation procedures. I believe the committee evaluation was intentionally mislead and misperceived by Dr. Duft to exclude the credit of the Microeconomic Core Exam, which represents the portion of the economic discipline from the Dept. of Economics. Without counting the credit of this portion, the written examination does not meet the academic standard of the IIDP and follow the actual content and format of the preliminary examination, which was officially established in May 1999. To fulfill the academic standard and procedures of the IIDP, the credit of the two portions of 50% satisfactory result must be counted toward the final conclusion of the written examination, therefore, there is no way I can be failed on the written examination, especially with the well-established and constructive evaluation criteria and procedures of the written preliminary examination of the Dept. of Agricultural Economics on two remaining portions of the examination.

With respect to the result of the written examination of the FCS part, Dr. Duft already **acknowledged** that my answer **was correct**, but incomplete somehow according to his only opinion. I believe that by the nature of the questions and time limit I had responded directly to what the questions were asking for and covered the details as much I could to provide, subject to the given time constraint (four hours with

three questions to respond). There were 3-4 parts in each question to respond to; that is, each part has 15-20 minutes to respond. I believe I did provide enough fair content to cover the main idea of the question. If all committee members had independently evaluated the answers with a well-established, constructive criteria and procedures of the Dept. of Agricultural Economics before Dr. Duft's only judgment, I believe the combined result of the Agribusiness Management and Marketing should be at least a marginal pass/satisfactory result. Therefore, there is no way I can be failed on the overall performance of the written examination.

The discrepancy in the finance examination content and the other unjustified factors as mentioned above, had significantly destroyed my emotion, discouragement, concentration, and ability to prepare for the examination. I could have done much better without this negative impact and substantially enough time of study for the finance examination.

I had a heart condition with unspecified irregular heart beat. It became irregular following high anxiety and stress. Prior to the written examination I had much reason for high stress based on what I strongly believed to be illegal and unethical procedures involving the examinations (written and oral). There obviously is high stress to begin with, that is natural. The additional stress placed on me should not have occurred!! Following the written examination I had more serious heart condition. I had no choice, but to see a doctor to help me to control my heart condition for two weeks, and then had to complete the oral examination. I also informed one of my committee members about my heart condition in case I need personal help during the oral examination; he also told me that he had kept his eyes on me throughout the oral examination.

If I was slow to answer the questions it was because I was striving my best to keep my heart condition controlled. Still I answered the questions within the time constraints correctly. Yet Dr. Duft stated I was too slow. Too slow,

indeed, I was a man and did my best under the worst of my condition!!

Based on the incidences I presented above, it is clear that my student right to be governed by clearly stated and justifiable academic procedures, rules, and regulations, had been violated. I believe Dr. Duft failed to uphold his responsibility as the chairperson to meet the university academic standard and to fulfill his obligations in the light of responsibilities to the student. As a result, I had been under pressure and frustration during my preparation for the oral examination due to the unethical and unjustifiable action from the chairperson. It yielded negative psychological impact on my concentration, encouragement and ability to prepare for the oral examination, effectively as I was not in a normal state of mind. It also had a serious impact on my physical health, which Dr. Duft already knew. His conduct was not legally and ethically justifiable, especially as the chairperson.

5. On Friday 11 February 2000, at the end of the oral preliminary examination, I expected to be called back to the room and to be told by the Graduate School representative the result of the preliminary examination in front of all committee members as well as to be asked whether I had any question and concern regarding the examination result and procedures. If I have any question and concern about the result of the examination and the procedures, the committee was supposed to give me the clarification at the end of the examination procedure within the presence of all committee members. Unfortunately, in fact, all committee members, including the representative, left the examination room, 211A Hulbert before the legal and official procedure was complete. While I was waiting to be called back in the room 213, Dr. Duft asked me to follow him to his office and informed me the result of the preliminary examination and that I was failed on the examination. He provided me the reasons why I failed the examination:

(a). Dr. Duft told me that the main result why I was failed on the preliminary examination was because my performance in the finance portion was not acceptable. Dr. Han said if the finance portion were a small portion of my research, it would be acceptable. Dr. Duft perceived that my research/dissertation was heavily weighted on financial analysis of the FCS as an institution. I feel that Dr. Duft intentionally mislead the other committee members and misrepresented my research content. The perception of my research direction is not consistent with my program proposal as approved by the Graduate School, which is heavily weighted on the economic portion, instead. The structure of my dissertation and conceptual framework of study were already laid out clearly in the program proposal on page 12.

The judgment on the oral preliminary examination should be fairly evaluated equal weighted across the three academic disciplines from the three department granting units. Most oral examination questions of 85-90% came from the FCS and finance contents, and approximately 10% came from agricultural marketing. Since there was no oral examination question directly on the areas of economics and agricultural economics, it clearly indicated that the committee already satisfied my academic performance from both department disciplines that met the IIDP program requirement, therefore, 50-60% satisfactory or passing result of the overall performance on the preliminary examination.

(b). Dr. Duft said I gave the wrong answer on the question of how the bonds are sold. My answer was it was sold at discount, but Dr. Duft said the correct answer is it is sold at premium. I still disagree with his answer we pay premium for buying an insurance contract, not for purchasing a bond.

(c). Dr. Duft also said that even though I got the correct answer, it took a long time to get the correct answer. However, since the oral exam has no time limit, the time cannot be the reason to failing me on the overall performance

on the preliminary examination. As long as the answer is correct, it is counted for the satisfactory result.

In addition to the reasons above, he advised me to see a counselor and offered to escort me to the French Ad Building in that night. But I did not take his offer. I managed myself to go there by myself, but no one was there because it was already after 5 PM. I believe this advice implies that Dr. Duft clearly recognized the consequence of his unethical conducts of the preliminary examination.

I believe the oral preliminary examination procedure was not followed by the university standard of academic integrity. There is no time limit for oral examination. I have not heard any preliminary examination that ended up with the disappearance of all the committee members and the representative. There was no reason that the committee left the room before the procedure was complete. It implies there was something inappropriate or an unethical argument in the evaluation procedure before the committee reached the final conclusion. I believe it also implies that the conclusion of the total performance on the preliminary examination did not meet the university academic standard and integrity somehow.

Moreover, my student rights to be governed by clearly stated and justifiable academic procedures, rules, and regulations has been seriously violated. My right to have a complete and fair procedure has been violated. I have the right to ask any question and express any concern relating to the whole preliminary examination process at the end of the process. The oral preliminary examination cannot begin without the representative to proceed; the end of the preliminary examination process is where the representative concludes the result of preliminary examination and calls to quit.

Finally, I have not received the result and explanation of the preliminary examination in writing. Since the representative proceeded the oral preliminary examination, Dr. Duft was not supposed to be the person who provided me

the result and explanation. I believe the standard and integrity of the university procedures have not been upheld.

Based on the facts of the incidences I have provided above, I believe that my right to be governed by clearly stated and justifiable academic procedures, rules, and regulations has been seriously violated, by the misconduct of Dr. Duft. With proper conduct, clearly stated and justifiable academic procedures, rules, and regulations, as well as the obligations to the student and profession, I believe I cannot be failed on the overall performance of the preliminary examination.

Therefore, I would like the Graduate School, WSU to consider overruling the result of the preliminary examination of the advisory committee in favor of me. If the Graduate School, WSU, does not rule in favor me, I would like the Graduate School to provide me both legal and ethical justification in details and in writing, with respect to what justifiable academic procedures, rules, and regulation, as well as ethical principles and policies the university practices, with all aspects relating to all concerns, issues, and my arguments above. I do not accept any verbal explanation!

I would like to express my great appreciation and thanks for your consideration.

Sincerely yours,
s/ B. Sakkarapope
Benjapon Sakkarapope

May 1, 2000

Dr. Karen P. DePauw
Dean of the Graduate School
Washington State University,
Pullman, WA 99164

Dear Dr. DePauw:

According to your letter of April 26, 2000, I was informed that I am being dropped from Washington State University effective May 5, 2000. I presume the decision of the Graduate School was carefully and thoroughly concluded by the legal and justifiable policies and procedures of termination of a student status at WSU. I also presume the decision was not based on a personal bias, but rather based on the informative facts and records at the Graduate School.

I am expressing in writing my serious concerns with regard to the termination of my student status at WSU. I believe the decision was not grounded on the accurate facts and official records at the Graduate School nor on the legal and ethical procedures for termination. I believe the Graduate School **cannot** drop me from WSU effective May 5, 2000, for the following reasons:

1. The Graduate Studies Committee and the Graduate School approved my petition to pursue the Individual Interdisciplinary Doctoral Degree in March 1999. The Interim Program Coordinator informed me by letter dated March 24, 1999, of this approval. The program for the doctoral degree was filed at the Graduate School on April 12, 1999. According to the Individual Interdisciplinary Doctoral Program at Washington State University Faculty/Student Handbook, the preliminary examination cannot proceed earlier than January 2000. The written examination was on January 12, 2000, and January 14, 2000. The oral examination was scheduled on February 11, 2000. The written and oral examination which made up the preliminary

examination is the only preliminary examination I have taken to fulfill the requirement of the IIDP.

2. According to the 1997-98 Graduate School Policies and Procedures, page 14, the second preliminary examination must have at least three months lapse time after a failed examination before a re-examination. From February 11, 2000, to April 26, 2000, it is only 2 months and 15 days. Thus, the justification of the Graduate School that I have failed the preliminary examination for the second time has no ground on the fact and record at the Graduate School itself.

3. I have to this day, not been officially informed by the Graduate School Representative of the result of the preliminary exam and I was not provided an opportunity to question the procedure nor any concerns I had about the examination. Dr. Duft gave me a verbal and unofficial explanation, however, I did not agree and accept the result or his explanation. I have appealed to you in writing on February 15, 2000, and met with you on March 29, 2000. You suggested I follow the appeal process with full details of the case and give my appeal to the Associate Dean. I turned in an appeal document to the Associate Dean, Dr. Hill, on April 19, 2000, and discussed the appeal with him on April 24, 2000.

It is my understanding the appeal process can go from the Graduate School to the Board of Regents, depending upon the satisfaction of the appealed result at each stage. Since the appeal procedure is in process and a final conclusion has not been reached, the result of the preliminary examination is pending, therefore, it cannot be used for any other consideration, especially the termination of my graduate student status at WSU.

4. There is no time limit for initiating a second attempt to take the preliminary examination.

5. I was admitted to a second masters degree program in statistics in May 1999. I have actively enrolled in the program since Fall 1999. My graduate student status at WSU cannot be terminated as stated in your letter because of the

pending appeal and my active enrollment in the statistics masters program.

Therefore, I question the justification of terminating me from Washington State University based on facts and records at the Office of the Graduate School, legal and ethical policies and procedures, and the above stated concerns. If the Graduate School confirms that the termination action is legally and ethically justified, I would like the Graduate School provide me the confirmation and explanation in details and in writing with respect to my concerns as I expressed above. In addition, I would like the Graduate School to provide me specific information to my questions below:

1) What source of facts and information does the Graduate School use to support such an official action, if not its own official records?
2) On what dates did I schedule the first and the second attempt of the preliminary examination at the Graduate School to fulfill the requirement of the IIDP?

Thank you for your consideration my concerns.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

May 4, 2000

Dr. Karen P. DePauw
Dean of the Graduate School
Washington State University,
Pullman, WA 99164

Dear Dr. DePauw:

I am in receipt of your letter dated April 27, 2000, which informed me I am being dropped from Washington State University effective May 5, 2000.

I am again expressing in writing my serious concerns with regard to the termination of my student status at WSU based on a legal basis. As stated in my previous letter dated May 1, 2000, I believe the decision was not grounded on the accurate facts and official records at the Graduate School nor on the legal and ethical procedures for termination. I believe the Graduate School **cannot** drop me from WSU and the IIDP effective May 5, 2000, for the following reasons:

1. The sentence stating, "students who have failed the preliminary examination and are not recommended for a second examination can no longer pursue work leading to the doctorate," is not a familiar policy to me. I have not found this quoted policy in any of the following documents published by the Graduate School:

a) The Individual Interdisciplinary Doctoral Program at Washington State University Faculty/Student Handbook, Rev. Jan. 1999.

b) The Graduate Student Code, January 1998 and October 1999.

c) The Graduate School Policies and Procedures, 1997-98, 1998-99, and on the online documents published on the Graduate School Website with the last updated version on 3/2000. The contents under the sections of Graduate School Policy, Examinations, and Academic Standards, are exactly the same.

I am not aware of any other documentation available to students which state the policy per your letter of April 27, 2000, regarding this written policy. I would like the Graduate School to provide me the following information:

a) In which document and on what page of the Graduate School, the IIDP, and/or WSU the claiming policy was published?

b) On what date did the Graduate Faculty at WSU establish the claiming policy? I also need the Graduate School to provide me the particular policy document, which the Graduate School uses as a basis of interpretation or implication leading to the conclusion of the termination.

2. According to the 1998-99 Graduate School Policies and Procedures under the Examination section, page 14, a student's enrollment can be terminated **only** when the student has failed two preliminary examinations. This circumstance, which the Graduate School has cited in the letter date April 26, 2000, can **only** be used for the basis of termination with regard to the preliminary examination.

If the policy established by the Graduate Faculty is used to determine the fate of students, why was this documentation not provided to me when I began my graduate program?

3. According to the Graduate Student Code, October 1999, page 4-5, section Expectations of Departments and Programs, #4 and #8 have not been followed. I have to this day, not been given copies of the established criteria for terminating students from the IIDP as stated in your letter dated April 27, 2000. The IIDP also needs to provide me a written notification of the decision to terminate and information regarding the decision in a timely manner **before** I receive letters of termination from the Graduate School.

Also, I have to this day (2 months and 21 days), not been officially informed by the IIDP, the official result and explanation of the preliminary examination in writing and in a timely manner.

I question the ethical procedures of the IIDP and the Graduate School. I would like the Graduate School to provide me the reasons and explanation why the Graduate School did not fulfill the expectations as stated in the Graduate Student Code. If the IIDP and the Graduate School are exempted from the Code, I would like the Graduate School to provide me the reference in full details for my future consideration and understanding of the basis of the decision of the Graduate School.

4. According to the claiming statement in your letter of April 27, 2000, "students ....are not recommended for a second examination...," I would like the Graduate School to provide me **by whom** and the time dimension of such recommendation according to the interpretation of the Graduate School on the policy which the Graduate School is exercising, with a full-detail reference of the policy.

Until I receive clear answers to my concerns, I do not believe the Graduate School of Washington State University should recommend my termination on May 5, 2000.

It is also my understanding that the chair and my committee is a supportive unit of the graduate student as stated on page 5 of the Graduate Student Code, section Expectation of Faculty Advisors and Mentors. I believe I did not receive the following from my advisors:

a) Interest beyond the mere advisor-director role to one of teacher and mentor;
b) Effective mentoring for insuring that graduate students receive advice and mentoring during the course of their graduate study;
c) Interaction on a regular basis providing guidance, advice, and intellectual challenge.

I cannot take this termination lightly as it is my career and life being demolished. I strongly believe that I have not received the support as stated in the graduate documents.

I am asking that my concerns be carefully examined on a legal and ethical basis, and, using these two bases, I

receive an answer to my concerns as stated in my May 1, 2000, letter and this letter dated May 4, 2000.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

June 9, 2000

Dr. Herbert Hill
Associate Dean of the Graduate School
Washington State University
Pullman, Washington 99164

Dear Dr. Hill:

I am in receipt of your letter dated May 19, 2000. The content of your letter does not provide me with a precise, constructive, informative and justifiable explanation. I also feel your review misrepresents my appealing issues and does not substantially cover details responding directly to my requests as stated in the April 19, 2000, letter. Your interpretation and understanding of the issues as well as the relevant rules and policies do not answer the specific issues as presented in the written materials of appeal.

On April 24, 2000, you told me you would carefully review my appealing case and make a recommendation to the Dean within a week and provide me with the results. If you had any further questions you would contact me. You stated in your letter, "I find no sufficient basis on which to overturn the academic judgment of these five WSU Professors." Because my appeal involves unusual academic matter and issues of conduct, I strongly feel that the issues of my case are both academic issues and the interpretation of the rules, procedures, and policies. The faculty conduct in question relates to the Faculty Code of Professional Ethics. According to the Graduate Student Code, October 1999, pages 8-9, the

appealing case would best be served through deliberations and recommendations by the CGSRR.

You stated, "The sole purpose of the preliminary examination is to 'determine the fitness' of the student for pursuing a doctoral program in the field in which a degree is desired." The MEANS and justifiable CRITERIA of the academic evaluation to meet the abstract term 'fitness' are part of the core issues here. Another issue in my case is the conduct of a faculty to uphold the academic standard with respect to the means and criteria. You provided only the statement, "I can find no sufficient basis on which to overturn the academic judgment of these five WSU Professors," which does not provide a professional analysis in response to my appealing issues.

The experience and academic quality of individual faculty members are qualifications and requirements of being a graduate faculty member but should not be solely used to determine "the fitness of the student." These characteristics do not guarantee that the present and/or future conduct was appropriate and therefore met the IIDP standards. The example in my case is that out of the **six**, not five, faculty members officially serving on my advisory committee, only one has experience serving as a committee member of another IIDP advisory committee (and to my knowledge, he has never served as a chairperson of any IIDP advisory committee). This faculty member was not active in my preliminary examination before the oral examination. As I am sure you are aware, the IIDP is different from other doctoral programs and is based upon the student's tailored program of study. Your letter of May 19, 2000, does not reflect the careful reflections of understanding and comprehending all the basis of my case.

I believe you inaccurately understood the basis of my request referring to the academic integrity of the written examination. The preliminary examination, as you know, consists of both written and oral examinations and are evaluated by different sets of justifiable criteria and

procedures. My April 19, 2000, letter provided substantial supporting evidence.

You stated there is no mention of a document called "Proposed Content and Format of the Examination" in the IIDP handbook and there is no statement that such a document would be a legal contract between the student and the committee" and it is the "prerogative" of the advisory committee to discuss the format of the exam with the student. Indeed, the committee does has the right to determine the actual content and format of the examination as stated. The facts are that 1) once the committee CHOOSES the means to discuss with the student, the committee gives up the other means, and 2) the committee officially acts as the university representative upon the relevant rules, procedures, and policies. The agreement between "the student and his committee" (in either verbal or written statement or both) should be considered an honorable contract. It is at this point when the document called "Proposed Content and Format of the Examination" should become an honorable contract which is treated the same way as other legal contracts. The email communication records are the concrete evidence which should be considered as proof that an honorable contract was established in May, 1999. These same communications records establish the advisory committee chose the prerogative to "discuss" with the student at least six months prior to the preliminary examination the actual format of the examinations.

Page 16 of the IIDP Handbook states the responsibility of the chairperson is to ensure that the committee members and the student agree upon a reading list for the preliminary examination. This list forms an agreement bond of honor between the committee and the student and becomes part of the rules governing the preliminary examination as well as the university academic standard. In conversation with the committee and listed on the "Proposed Content and Format of the Examination" the reading list was agreed upon through this document in

writing via e-mails by three faculty members with the other members verbally informing me of their agreement as proposed. These actions by my committee represented a positive agreement and the basis to be followed for the examination. As stated in my letter, the agreement was not upheld and carried through in the examination process. Because the rules were established by the Proposed Content and Format of the Examination document agreed upon by members of my advisory committee, I strongly believe the document should be honored as viable proof and substantiate my case in having the decision rendered in your letter as not in compliance with the student code of helping the student to succeed in their chosen program.

There is the student's right to be accurately informed of program requirements and expectations upon enrollment. These should be clearly stated and followed as agreed upon between the student, the committee, and the student's chair. The student's chair also should provide positive support and feedback to the student. I also must be clearly informed regarding the justifiable rules governing my preliminary examination. I have stated why I strongly feel my graduate student rights have been seriously violated and provided in detail an explanation in my April 19, 2000, letter.

Although I am not an American citizen, I have had work experience in serving both in a faculty position and an administrative position as an Associate Dean and I do understand professionalism in accordance to ethical principles. I also believe you, Dr. Hill as Associate Dean of the Graduate School, are in good standing with the University and Graduate School and have had extensive experience in evaluating graduate students for their academic fitness to pursue a Ph.D. degree as well as the other committee members. But I strongly urge you to reconsider your denial and present my case in a non-bias and professional manner according to the Graduate Student Code because of unusual academic and conduct matters. I will continue to have confidence that Washington State

University will do everything possible to resolve the differences and assist this humble student in my quest for success, not failure as is the motto of such a dynamic educational institution. Since I believe I am an intelligent individual, it is with grave concern that I continue in pursuit of my future with the proper education which is the groundwork and basis for the existence of healthy, state supported institutions such as WSU.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
Cc: Dr. Karen DePauw, Dean of the Graduate School

July 12, 2000

Dr. Karen P. DePauw
Dean of the Graduate School
Washington State University,
Pullman, WA 99164

Dear Dr. DePauw:

I am once again writing in regards to my appeal. I have brought my appeal before the Graduate School in detailed letters dated February 15, 2000 and April 19, 2000. Dr. Hill's reviews in his letters of May 19 and June 28, 2000 do not reflect a professional analysis in response to my issues as presented in letters of April 19 and June 9, 2000.

I feel Dr. Hill's second review in his letter of June 28, 2000, again "misrepresents my appealing issues and does not substantially cover details responding directly to my requests" as stated in the April 19 and June 9, 2000 letters. He stated "Their primary purpose is to evaluate whether a student is capable of integrating knowledge and discussing concepts in a critical manner." As I clearly stated in my letter of June 9, 2000, the MEANS and justifiable CRITERIA of academic evaluation to determine the student's ability of

integrating knowledge and discussing concepts are part of the core issues here. The purpose of the exam is not in question in my letters regarding my case.

His second review provided the statements, "I found no major infraction of the rules of the preliminary exam sufficient to cause you to fail the exam," and "I could find no indication that Dr. Duft misled or inhibited the committee in their evaluation of your exam," which do not provide a sufficient analysis and understanding of the appealing issues. His reviews do not demonstrate professional consideration with explicit rules, facts, ethical principles, and rationales supporting his conclusion and decision. By his own words of finding "no major infractions of the rules" he indicates he found, at least, some "infraction" of the rules of the preliminary exam in his second review, but he did not explicitly spell out the number and nature of the "infractions." Also, he did not provide information about what rules and what ethical principles he used as the basis of his review to justify the term "sufficient." Therefore, the integrity of the preliminary examination result is still in question.

The Graduate Student Code page 9 states "once allegations are brought to the Graduate School in writing, the CGSRR will be formed within 30 days and will deliberate and render a recommendation within 60 days." I clearly expressed my case consists of **a combination of unusual academic matters and faculty conduct.** The appealing issues are critical. To date it has already been 148 days. Also, it is 83 days from my letter of April 19, 2000, till my last receipt of Dr. Hill's reply dated June 28th but was not received till July 7th. My appealing issues have not been directly and professionally answered with a precise, constructive, informative and justifiable explanation. I believe my appealing case will be best served through deliberations and recommendations by the CGSRR. Thus, I am asking you to refer my case to the CGSRR if you chose

not to overturn the results of the Preliminary Examination in my favor.

I request the Graduate School and/or CGSRR provide me with explicit information and explanations in specific details to the following:

1. List and clearly state all rules, justifiable academic procedures, and regulations governing my preliminary examination, which the Graduate School and the advisory committee used as the basis of the evaluation from the beginning to the end of the examination process.

2. Disclose the justifiable academic criteria the examination committee used to evaluate my total performance of the written and oral preliminary examinations. Also, disclose the academic reasons of all votes to fail.

3.Which actual content and format of the preliminary examination did the committee and the Graduate School use to govern my preliminary examination if it was not the document called "Proposed Content and Format of the Preliminary Examination"? Why was I not informed and guided to prepare for my preliminary examination accordingly?

4. Provide a copy of both exam questions (written and oral), my answers, and the answer keys. Provide a professional justification of how the exam questions cover all three department disciplines, as stated in the IIDP handbook page 15, with respect to my program of study approved by the Graduate Studies Committee. Also, provide a professional justification how the IIDP requirement and expectations were met without including the credits of the satisfactory performance of the written examination in both department disciplines, Economics and Agricultural Economics.

5. Provide a professional and ethical justification on the changes in the contents of the written examination, which did not follow the agreed contents and format of the examination as well as the reading list, and how these

changes met the responsibility of the chairperson according to the IIDP handbook page 16.

6. Provide a professional and ethical justification on the denial of reevaluating the written examination as I requested on January 31, 2000, before the oral examination could proceed.

7. The IIDP handbook page 16 states "all of the committee members evaluate the written examination and communicate with the chairperson the results of their evaluation." Provide a professional and ethical justification of the violation of this guideline as in the IIDP handbook.

I am also requesting that I receive full answers in writing to my concerns as stated in my letters of April 19, May 4, and June 9, 2000 as well as in this letter.

As stated in earlier correspondence, my life and career are in jeopardy and I request justification of why I am not educable. It is my understanding that the purpose of an institution such as WSU is to do everything in their power to provide support to further the education of their students. Failure of a student should be done only after every avenue has been pursued to make sure that the student has achieved success for his or her future life. Only then can we have citizens solving the challenges of our world.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

July 24, 2000

Dr. Karen P. DePauw
Dean of the Graduate School
Washington State University,
Pullman, WA 99164

Dear Dr. DePauw:

I am in receipt of your letter dated July 14, 2000. I would like to thank you for your consideration of overturning the Associate Dean's decisions, and referring my appeal to the CGSRR as of my letter dated July 12, 2000.

I am expressing my concerns with regard to your letter dated July 14, 2000. I feel you brought up three relevant issues in the accordance with the adjudication procedures of the rights and responsibilities of the Graduate Student Code on page 8-9. The first issue is on what date the CGSRR must be formed in accordance with the Graduate Student Code? My understanding is that the Graduate School was obligated to refer my appeal to the CGSRR within 30 days as of my letter dated April 19, 2000, which brought my appeal before you as the Dean of the Graduate School. I do not understand why the CGSRR was not formed by May 19, 2000. Also, to date, longer than 90 days as of April 19, 2000, I have received four letters from you and three from the Associate Dean, Dr. Hill, and none of them have answered my appealing questions. Why have my questions not been answered or even referred to in the letters received from you as Dean of the Graduate School and from Dr. Hill, Associate Dean of the Graduate School?

You stated "I consider this request to be 'the first step in the formal appeal' to the Dean of the Graduate School in accordance with the procedures 'articulated' on p. 8-9 of the Graduate Student Code." I did not find the words, "formal appeal," or any statement on page 8-9 of the Graduate Student Code indicating formal or informal appeal to the Dean of the Graduate School. I do not find nor understand

how "formal or informal" versus the word appeal applies to the appeal process/adjudication procedure. The Graduate Student Codes defines the adjudication procedures of graduate student concerns as shown in Figure 1 on page 10, which are normally followed to handle student concerns at WSU. The Graduate Student Code page 9 states "Once allegations are brought to the Graduate School 'in writing,' the CGSRR will be formed within 30 days."

Your May 4, 2000, letter acknowledged that my appeal was brought before the Graduate School through the Associate Dean; it had been handled by Dr. Hill as Associate Dean since April 19, 2000. In the same letter you stated "I understand that the appeal process is currently underway." You also informed me the appeal process provides several steps according to the same Graduate Student Code, and you did not mention anything about a "formal appeal."

I have been in the appeal process since discussing my exam results with my advisor, Dr. Duft, on February 11, 2000; this was the first step of the appeal process. The result of this first step was that Dr. Duft denied my request. I appealed to you as the Department Chair on February 15, 2000; this was the third step of the process. On March 29, 2000, you told me to bypass your review as the Chair and you would accept the appeal as Dean of the Graduate School. You also informed me my appeal would be handled by the Associate Dean as stated in the Graduate Student Code page 8-9, "Strictly academic issues brought before the Graduate School are typically handled by the Assistant and Associate Dean of the Graduate School, with the appeals made to the Dean of the Graduate School." Thus, the result of this third step was that you bypassed your review to the Graduate School.

My appeal was brought before the Graduate School through the Associate Dean in a letter dated April 19, 2000, and addressed to you as the Dean of the Graduate School. This was the fourth step of the process. I did not address my appeal to Dr. Hill as the Coordinator of the IIDP. The fourth

step of the appeal process (Graduate School Dean) must have the recommendations of the deliberation of the CGSRR within 60 days of the date the CGSRR is formed for your review and action. Therefore, the CGSRR was to be formed by May 19, 2000, with their deliberated and rendered recommendation to you by July 18, 2000.

To date, the result of the fourth step has been the Graduate School did not refer my appeal to the CGSRR within 30 days as of April 19, 2000. Instead, the Associate Dean reviewed, deliberated, and rendered a recommendation by himself. His decisions to deny my appeal were stated in his letters of May 19 and June 28, 2000. Indeed, the Associate Dean denied my appeal two times on behalf of the Graduate School Dean, and advised me to appeal his decisions to you, the Dean of the Graduate School.

Therefore, my letter of July 12, 2000, brought before you as the Dean of the Graduate School at this time was to appeal the denial of the Graduate School to my appeal of the April 19, 2000 letter.

A second issue is what roles Dr. Hill represented with regard to his letters of May 19 and June 28, 2000? As stated above, based on your rationale of bypassing your review as the Department Chair, the Associate Dean of the Graduate School, or in my case, Dr. Hill, would be appropriately bypassed as Coordinator for the IIDP and would handle the appeal as Associate Dean of the Graduate School. The Associate Dean is part of the Dean's administration. It is clear that my appealing case was brought before the Graduate School by bypassing the reviews at the departmental level up to the Graduate School level. Thus, Dr. Hill had handled the appeal as the Associate Dean as stated on page 8 of the Graduate Student Code, not as the Coordinator for the IIDP. His letters of May 19 and June 28, 2000, suggested that Dr. Hill acted as the Associate Dean and on behalf of the Graduate School Dean.

You stated in your July 14, 2000, letter I "requested a formal appeal" of the results of my preliminary examination.

I do not understand your interpretation of my request as for "a formal appeal" because I did not state these words or use any other word indicating that I requested a formal appeal of the results of the preliminary examination in my July 12, 2000, letter. The adjudication procedure does not reveal any word referring to a formal and/or informal appeal procedure either. Thus, I believe this is not consistent with the facts, I stated, and the appeal procedure. I also feel the rationale and vocabulary used in your letter of July 14, 2000, seem to mislead my understanding of the adjudication procedure.

By the nature of the Graduate School acting on my appeal and the procedure my appeal has gone through since February 11, 2000, I understand and consider your July 14, 2000, letter as overturning the Associate Dean's decisions with regard to my appeal of April 19 and June 9, 2000. You have chosen not to overturn the results of the preliminary examination at this point but to have my appealing case deliberated and rendered a recommendation by the CGSRR before you review and make a decision with regard to my request of July 12, 2000, letter. Therefore, the deliberation of the CGSRR should include the Associate Dean's handling of my appeal case, and the appealing issues of my letters dated April 19, June 9, and July 12, 2000, as well as all other relevant issues.

Another issue is because of the handling of my appeals dating back to February, 2000, I question whether a fair and unbiased rendering of opinion by the CGSRR will be jeopardized. I am in total disagreement with your calculated dates involving the "within 30 days and 60 days".

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

October 5, 2000

Dr. Karen DePauw, Dean,
The Graduate School,
Washington State University
Pullman, WA 99164

Dear Dr. DePauw,

The documents, Summary of Events and Summary of Rules and Violations, as you requested are enclosed. I am writing to provide you additional statements to clarify the crucial arguments I stated to you on October 4, 2000.

As you stated, the academic evaluation of the advisory committee on the performance of the preliminary examination is not quantifiable and was reached by academic judgment of individuals. As I clearly stated to you, I have not yet made arguments in the academic quality of the contents of the evaluation. I did not question the competency and intelligence of individual faculty in processing the information within their minds. I questioned the information and perception they used in processing the evaluation and the procedures used in the evaluation process. My appeal, at this stage, is dealing with the legal and ethical bases of the academic judgment.

My right to be governed by clearly stated and justifiable academic procedures, rules, and regulations cannot be violated. The committee, especially the chairperson, has obligations to follow the relevant procedures and establish the justifiable academic procedures. The term, "justifiable," means the academic procedure is having sufficient grounds for defending as correct. Thus, the justifiable academic procedure should have constructive structure of the evaluation and the academic judgment should be explainable rather than of non-quantifiable nature and faith on integrity of the faculty title. I believe failing me on the examination violated my legal and ethical rights.

On principle, judgment with ethical and legal bases has to follow the procedures and rules as outlined. Faculty and students have rights, obligations, and responsibilities according to all university rules, policies, and other relevant regulations. The faculty has ethical and legal rights to make the student's academic evaluation, but the faculty must meet its obligations by upholding all university rules, policies, and procedures published in the handbook or manuals. All procedures stated in the handbook are part of the academic standard.

As I expressed my concern to you, on September 1, 2000, the CGSRR told me the committee would meet with the advisory committee and then meet with me again after 2-3 weeks. Before the CGSRR deliberated and rendered a recommendation to you, I expected the CGSRR would verify and clarify with me any inconsistency in evidences and information obtained from both sides. Unfortunately, the CGSRR did not provide me this opportunity.

Because I was not given an opportunity as stated by the CGSRR chair, I am writing to express my concern and clarify the main issues discussed in the September 1, 2000, meeting with CGSRR. In reflecting over what was asked in the meeting, I would like to ensure there is no misunderstanding or misinterpretation from what I stated with regards to my beliefs and the facts of the appealing case. I am submitting a written statement with regard to my concerns and the main issues discussed. This letter provides you with my written statements for your considerations.

1. The structure and scope of the preliminary examination:

1). The legitimate scope of the preliminary examination is subject to the framework of the program proposal approved by the Graduate Studies Committee. The program of study is constituted with three areas of interest drawn from the three department disciplines--Economics, Agricultural Economics, and Finance.

2). In May 1999, the agreed contents and format of the preliminary examination, the document, "Proposed Content and Format of the Preliminary Examination," was established and agreed upon according to the instruction of the IIDP Faculty/Student Handbook page 15 and within the scope of the program of study. The IIDP handbook on page 15, instructs the advisory committee "the preliminary examination should cover all of the student's interest areas of study." Dr. Duft and the advisory committee did follow this instruction when discussing the actual content and format of the preliminary examination. The content structure of the preliminary consisted of four main portions as stated in the appeal letter dated April 19, 2000, pages 4-5. The three areas of interest were covered under this content structure of the examination and the scope of the student's program of study. However, this structure of the examination was not explicitly stated in details in the document because of the bond of trust and honor in good faith between faculty and student.

2.The readiness for and belief of having a satisfactory result of the preliminary examination:

Dr. Blank asked how well I prepared for the exam and how confident I would be if I were given the exam according to the agreed content and format of the examination. Since the content and format of the examination was based on the agreement between the advisory committee and the student, I was comfortable and confident in my ability to pass the examination. The January 2000 examination would account for only the remaining 50% of the total satisfactory performance because I was granted a 50% satisfactory result toward the total performance of the written examination taken prior to the January examination. In fact, I was not examined in the areas of Economics and Agricultural Economics since satisfactory result credit was given toward the total performance of the examination.

Because of this satisfactory result, it indicated the advisory committee was already satisfied with the student's

total academic performance in the two portions, Economics and Agricultural Economics, with 50% satisfactory result of the preliminary examination.

Accounting for the remaining two portions with proportionate evaluation and judgment, I believed under the common academic and ethical practice at WSU, there was no possibility that I would have a failing result in the preliminary examination. Since I was given a failing result unanimously without a second attempt, I strongly feel there must be constructive and justifiable reasons from ethical, legal and academic bases.

3.The understanding of the rules and procedures of the preliminary examination:

Dr. Harsh referred to the IIDP handbook as a "guideline," which the advisory committee may or may not follow. He stated faculty members may choose any questions they consider appropriate. I would like to clarify my belief and understanding:

1). Each department/program has its own established scope and format of the preliminary examination with no need to establish the actual content and format for individual students in the program. The scope of the content is unique and understood among students and faculty members. Most programs also provide previous copies of the examination for students' preparation to use as a guide. Whatever exam questions are selected still fall in the agreed and understood scope of the same program requirements.. Each student pursues the same disciplinary degree program.

2). The practice of the other degree programs on campus is not necessarily appropriate to an IIDP student. Each student's program of study in the IIDP is different and individually tailor-made. The IIDP handbook provides instruction which is commonly appropriate to all students in the IIDP. It is considered a fair practice for all students in the program and used as an academic standard in IIDP. If any instruction is not appropriate and is disadvantageous to the

student or is not practical under particular circumstances, the advisory committee may introduce any alternative to the rules or instruction. If there are no substantial rationale for making any alternations to the rules and procedures, the advisory committee should follow the IIDP handbook. As there is no common examination for all students in the IIDP, the actual content and format is established for each student before the preliminary examination. It is established by constructive and justifiable academic criteria, and it is ethical to provide appropriate guidance for preparation and to give adequate time for the student to prepare for the examinations.

3). A critical issue is whether the advisory committee is obligated to follow the IIDP handbook.

a). According to the American Heritage Dictionary, the word, "Handbook", refers to "a concise manual or reference book providing specific information or instruction about a subject or place." I understand the IIDP Faculty/Student Handbook contains specific instruction for both faculty and the student to follow.

b). The cover letter from the chair in the IIDP handbook states "This handbook is devised...to offer specific guidance for faculty working on interdisciplinary committees and students progressing through the program." I believe this statement indicates a clear objective of the handbook for faculty to follow its specific instruction.

c). There were two incidents indicating that Dr. Duft, chairperson, acknowledged and strictly followed the IIDP handbook:

(1). The original schedule of the written examination was proposed for the second week of December 1999. The IIDP handbook page 15 states "the earliest a student can take preliminary examinations is at least two semesters after the program proposal has been approved." The advisory committee strictly followed this instruction by rescheduling the written examination from the second week of December 1999 to January 12 and 14, 2000.

(2). The IIDP handbook page 16 states "*No more than thirty days* should elapse between the written and the oral examination." Dr. Duft also strictly followed this instruction by denying my request to reevaluate the result of the written preliminary examination on January 31, 2000, and then strictly enforcing the instruction of the IIDP handbook by instructing me to schedule for the oral examination with 30 days (the oral examination must be scheduled by February 11, 2000). This incident indicates the IIDP instruction was strictly followed without considering the student's concern, which was crucial to the evaluation process of the preliminary examination.

Since the IIDP handbook is given to the student to use in understanding the expectations of the doctoral program, it must be considered the groundwork of the WSU policies and academic standard procedures, which the faculty members are obligated to follow. As stated above, Dr. Duft as the chairperson had acknowledged, understood and followed the IIDP handbook for the specific instruction of conducting the preliminary examination. Since Dr. Duft strictly followed these particular instructions, there is no logical reason for the advisory committee not to follow the rest of the instructions. Selective practice in using the IIDP handbook, when applied to fairness of the student's rights, is questionable where legal and ethical justification is involved.

There was a case in the Department of Crops and Soil Sciences where the advisory committee did not continue the oral examination when the committee perceived the students' performance was not as expected, and conditions were not proper. The oral examination was stopped and rescheduled for a later date in the week under proper conditions. I believe this is an example of ethical standard practice at WSU. I also believe that the examination committee is ethically obligated to facilitate proper examination conditions and not to generate any circumstances that yields disadvantage to the student in the process. This is vital to ensuring the proper academic standard and integrity.

4. The clarification of the statement, "Dr. Duft's conduct misled and inhibited the advisory committee to develop a fair evaluation of the preliminary examination."

Dr. Grimes asked me to clarify this statement because it is serious. As I stated in the meeting, I am not accusing the faculty, but the facts in regards to procedures used and their fairness to me as the student, are questionable. Dr. Duft, as the chairperson, is responsible for administering the preliminary examination with proper procedures and instructing both committee members and the student to follow all relevant rules, policies and procedures of WSU.

I, personally, understand that there is a difference in the way our two cultures perceive, think and arrive at our solutions. What your culture may consider an accusation I, from my culture, see as a statement of the facts as I understand them being acted out and is not an accusation at all.

The terms, "mislead and inhibit," has two meanings to me:

1). Dr. Duft misled the student in the exam preparation and then this inhibited the student's ability to demonstrate his academic performance in the examination process. Dr. Duft, as an advisor, had guided me to prepare for the preliminary examination according to the agreed content and format of the preliminary examination since May 1999. The agreed content of the written examination was not followed; the exam questions were not drawn from the reading list and scope of the content, which I was guided to follow. This misleading guidance inhibited my ability to properly demonstrate my academic performance within the scope of my program of study and was a disadvantage in my exam preparation. Consequently, the result of the written examination did not reflect my knowledge and academic performance with respect to my program of study. The inconsistency between the guidance to the student and the instruction to the committee in conducting the examination

also misled the entire committee in the proper evaluation of the total performance of the preliminary examination to meet the requirement of the IIDP.

2). A fair evaluation of the preliminary examination should consist of three main elements:

(a). All relevant rules, policies, and academic procedures with regard to the preliminary examination are followed.

(b). The student rights must not be violated and the expectations of the department/program, advisor, and mentors are met, according to the Graduate Student Code and other relevant regulation.

(c). The evaluation of the preliminary examination represents the scope of the program of study, which the student is pursuing, with clearly stated and justifiable academic criteria and procedures.

The agreed content and format of the preliminary examination as established by the advisory committee represented the academic standard for my case. The advisory committee should be obligated to follow its own rules as it officially acts on behalf of the IIDP, the Graduate School and WSU. The agreed content and format also determines the constructive structure of the written and oral examinations consistent with the four portions of the content covered by the three department disciplines. My concern in relation to conduct used is:

(i). I believe Dr. Duft did not ensure the entire committee correctly perceived and understood the agreed content and format of the preliminary examination, especially the structure of the written examination. The evaluation of the written preliminary examination did not include the other two portions which were granted satisfactory result toward the total written performance. The evaluation was not consistent with the agreed content and format of the preliminary examination and my program of study, therefore, this misled the entire committee in the proper evaluation of the examination.

On January 31, 2000, the denial of my request to have the advisory committee reevaluate the total performance of the written examination before scheduling the oral examination inhibited the entire advisory committee from having proper information and following regulated procedures. The evaluation process of the preliminary examination is the matter of the entire advisory committee, not only the chairperson. Any concerns or discrepancies should be acknowledged and have a resolution from the entire advisory committee in a timely manner. Therefore, I feel this conduct inhibited the entire committee in their evaluation of the written examination because of missing information and rendering a proper determination.

(ii). The IIDP handbook instructs all committee members to read and evaluate the written examination before the oral examination. I believe the rationale behind this instruction is to provide an opportunity to the entire committee to use individual academic intelligence and professional judgment to review and evaluate the subject content/matter independently and thoroughly before the final evaluation is made. Dr. Duft did not follow this evaluation procedure which I believe inhibited a proper procedure for conducting the oral examination.

I believe the total performance of the preliminary examination was concluded with missing crucial information causing a misperception in the procedures and relevant regulations.

The entire advisory committee was to acknowledge and perceive factual evidence associated with the examination process before evaluating the student's academic performance. This perception includes: guidance to student, scope of program of study, all the agreements made with the student in both verbal and written communication, all student's concerns brought up during the process, proper environment for the examination, proper rules, procedures, policies, and other relevant regulations.

In common practice, the conduct of the entire committee is the responsibility of the chairperson. The chairperson plays major roles in administering, instructing, leading, and ensuring the preliminary examination proceeds according to WSU rules, policies, procedures and other relevant regulations.

I believe a failing result cannot be made if there are incorrect perceptions or missing information. It does not matter whether it happens intentionally or unintentionally, it yields the same consequence to the student.

5.The perception with regard to given information, which is not directly relevant to the appealing case:

As I was asked a question relating to my history at WSU prior to the admission to the IIDP, I realized that the CGSRR was provided some personal information which may or may not be relevant to the appealing issues. I ask for an opportunity to state my side if this information is used in the decision of my case. If there are unclear meanings or incidents, I would be happy to clarify.

I would like to express my appreciation to you in your effort of resolving this academic crisis in my life, which is the foundation of my whole future.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

November 6, 2000

Dr. Karen DePauw, Dean,
The Graduate School,
Washington State University
Pullman, WA 99164

Dear Dr. DePauw,

I am in receipt of your letter dated October 10, 2000, in which you informed me that you concurred with the recommendation of the CGSRR. I would like to thank you for realizing the impact of your final decision as a bitter disappointment and life-long stress to me, which reflects significant consequences in both monetary and humanitarian costs.

I was not surprised with your decision because it followed the same meaning as previous statements you said to me. On February 14, 2000, before you read and reviewed my case, you stated the advisory committee unanimously failed me and my enrollment would be terminated at the end of the Spring 2000 semester. You did exactly what you said without reviewing my case in detail, and knowing that the appeal was underway. On October 4, 2000, you asked me what I planned to do after your final decision. You told me that you skimmed over some documents and the CGSRR's report, but had not yet read and reviewed all documents of my case in detail. You would be out of town on October 5, 2000, and would try to give me an explanation in writing by October 10, 2000. Your defending tone during the conversation suggested you had formed a final decision before you reviewed all materials.

President V. Lane Rawlins stated in his Fall 2000 ALL-University Address on September 18: "There are **no forbidden questions or ideas** here. We must be the place where ideas can be expressed and independent thought fostered. No free society can exist if all ideas are not given an opportunity for a fair hearing." At this stage, my questions in

the appeal letters of April 19 and July 12, 2000 have not been answered nor my requests responded to. Each step the appeal went through produced more procedural irregularities.

President V. Lane Rawlins also stated in the same address: "The stakes are high include what I believe to be the **heart** of the university; the right of the faculty to set the curriculum and decide the course of their research. Like all other rights, this carries with it a considerable responsibility, including **a responsibility to justify the process to those who pay for it**. Whether the questions are as mundane as the calculus requirement for business majors or as fundamental as why research in medieval literature is important, we **must** understand that our **credibility is in question.** We **must not squander** it by defending the indefensible or that which is only marginally important."

My first appeal of April 19, 2000, asked the Graduate School to provide me both legal and ethical justification in writing, with respect to what justifiable academic procedures, rules, and regulation, as well as ethical principles and policies the university practices, relating to all concerns, issues, and my arguments. I chronologically presented the problems of procedural irregularity in the preliminary examination process, and provided supporting documents. The results to this first appeal are:

1) By the letter dated April 26, 2000, the Graduate School was dropping me from Washington State University effective May 5, 2000. The Graduate School misperceived that I failed the preliminary examination two times. In fact, this was incorrect. On May 1, 2000, I received a corrected copy of the April 26th letter, with another letter dated April 27, 2000. The corrected letter referred to **an unpublished policy**. I believe the Graduate Faculty at Washington State University did not establish the referred policy as claimed, since the Graduate School did not respond to my letter dated May 4, 2000.

2) The Associate Dean of the Graduate School, Dr. Herbert Hill, mishandled my appeal case by not referring my

appeal to the CGSRR within 30 days as stated in the adjudication of rights and responsibilities of the Graduate Student Code. The Associate Dean reviewed and deliberated by himself and denied my appeal two times on behalf of the Dean of the Graduate School as in his letters of May 19, and June 28, 2000. Both his reviews did not respond to my concerns and the stated issues of the appeal case. My letters of June 9 and July 12, 2000, questioned Dr. Hill's understanding and analysis. His second review, the letter dated June 28, 2000, did not respond to the issues addressed in my letter of June 9, 2000, but suggested more procedural irregularities in his review process.

My second appeal of July 12, 2000, appealed the Associate Dean's decisions. This second appeal asked the Graduate School to refer my case to the CGSRR if the Dean chose not to overturn the results of the preliminary examination in my favor against the Associate Dean's decisions. I also asked the Graduate School to provide me explicit information and detailed explanations in seven categories, in addition to full answers in writing to my concerns as stated in my letters of April 19, May 4, June 9, and July 12, 2000. The results of the second appeal are:

1) By the letter dated July 14, 2000, the Dean of the Graduate School overturned the decisions of the Associate Dean, but chose not to overturn the result of the preliminary examination at that time and referred the appeal to the CGSRR. This letter also brought up issues of procedural irregularity in accordance with the adjudication procedure and the roles of Drs. DePauw and Hill in the appeal process. I expressed my concerns with this regard in the letter dated July 24, 2000. These issues are still controversial and unresolved.

2) By the letter dated October 10, 2000, the Dean of the Graduate School concurred with the CGSRR's recommendation. The bases and rationales of the final decision suggested more procedural irregularities under the

CGSRR process and the Dean's decisions. The main issues included:

(a) In their two-paragraphs report, the CGSRR perceived the purpose of the preliminary examination of the IIDP as the purpose of another Ph.D. qualifying exam of the other Ph.D. program. This basis reflects the critical irregularity of the CGSRR's review process, the CGSRR's understanding of the fundamental issues of the appeal, and inconsistency of the recommendation to the facts. The facts are:

(1) The IIDP Faculty/Student Handbook does not identify a Ph.D. qualifying exam as part of the IIDP program requirements. The terms, "fitness, competence and potential" are also subjective. Qualifications and operational definitions for rigorous Ph. D. programs are not necessarily the same. For the IIDP, the advisory committee and the IIDP administrators were obligated and responsible for establishing proper required qualifications and operational definitions, and to properly develop a method of evaluating the student's qualifications before the preliminary examination took place.

(2) The three departments--Economics, Agricultural Economics, and Finance constitute my approved program of study under the IIDP. The core academic disciplines underlining my Ph.D. program are economics, agricultural economics, and finance.

(3) I did pass two qualifying exams: (i) a qualifying exam of the Ph. D. program in Economics on a Microeconomic Core Exam, which is also a qualifying exam of the Ph. D. program in Finance; and (ii) a qualifying exam of the Ph.D. program in Agricultural Economics on an Economic Theory Exam. The qualification of the written examination on the Farm Credit Systems (FCS) cannot fundamentally and academically be added to the core academic disciplines and the results used as a substitution for the two core academic disciplines already passed.

(4) The advisory committee granted credits for the two qualifying exams as part of my written preliminary examination, but failed to take into account in the evaluation process. The chairperson of the advisory committee ignored it, and denied my requests and concerns with regard to this issue in the examination process.

(5) The Graduate School Policies and Procedures (page 14) states the preliminary examination "may be scheduled only after department/program requirements have been satisfied, after the program has been approved, after a substantial portion of the required coursework has been completed, and **when the student and advisor believe the student is prepared for the examination**."

Indeed, these facts suggest that I am fundamentally competent in the core areas of the three academic disciplines—Economics, Agricultural Economics, and Finance. Because: (i) all the requirements for the examination scheduling were met, (ii) the advisory committee (as an advisor) believed I was already prepared, and the advisory committee and the Graduate School approved the scheduling for the preliminary examination, and (iii) I am fundamentally competent in the cores academic disciplines, therefore, I have potential to become an independent scholar.

(b) What administrators are you referring to in your statement, "the administrators knowledgeable of the particular of your case?" What relationship and knowledge do they have in regards to my academic program and personal goals of my academic success? Who are the "selected faculty members?" Why do each relate to my academic program and what supporting role do each play? Why did the CGSRR not include all members of the advisory committee? Each member has equal rights, responsibilities, and obligations to the decisions of the advisory committee. No committee member should be excluded. The role of each administrator and selected faculty member and their relationship in the CGSRR process are in question.

According to the adjudication of the Graduate Student Code (page 8-9), I question whether and how these procedural irregularities of the CGSRR's utilized process constitute a fair hearing.

(c) You stated "the CGSRR has the right and responsibility to structure their role in the appeal process and, in this case, it did not include the opportunity for you to verify and clarify." The CGSRR has the right, but it cannot exercise its right in violation of the rights of the other parties, particularly in the university community. By not providing me the opportunity, I question whether my right to review allegations from the other parties, and right to a fair hearing were violated.

As stated above, the opinion of the CGSRR was fundamentally questionable and inconsistent with the facts, but you adopted it anyway. Also, you already overturned the Associate Dean's decisions on July 14, 2000, but here you adopted it as a basis of your final decision. I question whether your final decision and its bases and rationales merit the decision rendered.

President V. Lane Rawlins also stated in his University address: (i) "Let us be up front about our concerns about the **education process** and try **to apply research-based information** to improve it. Let us take the position that questioning the importance of our research is legitimate and we are willing to engage in that dialogue. It is time for us to willingly and patiently **explain what we do, how and why we do it, and how it is related** to the economic, social, and cultural environment. But it is not time to give in to unreasonable arguments or surrender that which we believe is vital to our mission; " (ii) "**All the ideas, findings, processes and conclusions are subjected to rigorous questioning and validation and only the best survive.** This is a place where notions about the sun orbiting the earth, the divinity of kings, the supremacy of money, and superiority of one race or religion over another are subject to open challenge. If such a

place does not exist independent thought and effective action will be suppressed."

A commonly accepted academic process for all academic works and evaluations generally includes four sequential components—theoretical/conceptual framework formulation, measurement and data/information collection, methods and analysis, and finding and conclusion. The finding and conclusion has no academic merit if there is improper conduct in the first three components. However, the reviews of my appeal case did not yet demonstrate the fundamental process of academic work and evaluation.

President Rawlins stated some basic questions in his Fall 2000 address: "What is an education? How do we learn and what is the most effective and efficient way of learning?" I question what the Graduate School and the faculty followed in defining "an education."

How can I learn without knowing how the preliminary examination had been conducted; what, how and why my answers were wrong and why they did not meet the qualifications for advancing to doctoral candidacy; and how I should improve my qualifications to meet the requirements and expectations of the Ph.D. degree program? To date, the appeal process and the Graduate School have not provided me the information with regards to my academic performance and learning development in the preliminary examination process. I need information regarding my academic standing in regards to the preliminary examination process, such as what and how the advisory committee established the examination and evaluation, what answers were wrong, what each faculty member was using as a measurement standard for passing or failing, and the approved committee procedural criteria in regards to my unique program. The bottom-line question is why my academic performance cannot be disclosed and validated in professional and scholastic manners. Do I not have a right to review and validate the education information and the

academic process, which involves impacts the evaluation of my academic performance?

Your interpretation and explanation supporting your final decision gives me more questions regarding procedural irregularities:

1) Regarding the instruction for Conducting Oral Examinations, your claiming facts are questionable based on what previously has happened on this campus where all committee members and the Representative remained and the Representative was the person who announced the result of the examination. The committee members usually clarified and provided details of their academic comments, conditions, and suggestions for improvement to the student. The students also had an opportunity to ask questions with regard to the examination and results for accurate, better clarification and understanding as well as to express his concerns, relevant view and opinions. This is part of the learning, development process, which the University as an educational service provider, is expected to follow in facilitating the student's learning development.

2) Your interpretation of the Graduate School Policies and Procedures that "this statement refers to the limit of a maximum, but not the minimum, of attempts to pass preliminary examinations," is confusing and misleading because the Graduate School Policies and Procedures represent minimal standards for graduate student admission, continuance, and degree completion. The Graduate School even permits a lower minimal standard by allowing third attempts to pass the examination, especially under the IIDP. This practice reflects the ethical standard of the IIDP and all students, under this program, should have equal opportunity and be treated on the same standard.

3) You took actions to terminate my enrollment from Washington State University as stated in your letters of April 26 and 27, 2000. In your letter of October 10, 2000, you took the action that "you will no longer be able to pursue a doctoral degree at Washington State University." You

repeatedly took the action of not allowing me to pursue a doctoral degree at Washington State University. You have the authority to terminate a student's enrollment from the doctoral program in which he/she has failed the preliminary examination two times. He/she will no longer pursue that doctoral degree, but may pursue other doctoral degrees at Washington State University. I question whether my termination as stated per your letters violates the University policy of equal opportunity in education.

4) With regard to a second examination, "A student who has failed a preliminary examination does not have an automatic right to a second examination." The advisory committee, the IIDP, and the Graduate School did not establish justifiable academic criteria and procedures for the eligibility "of the right to a second examination." Without established criteria and procedures, there is no automatic no-right to a second examination. In adopted practice, the Graduate School commonly gives a second opportunity to students. Dr. Duft, as the chair person, informed me before the examination took place that I would be allowed to have only two attempts, the practice at this University.

5) You stated "These perceptions are not in keeping with our policy and procedures regarding preliminary examination." I question the understanding, comprehending, and interpretation of the policies and procedures you are obligated and responsible to uphold. You are obligated to uphold all levels of the University policies and procedures, not selecting a particular policy of interest from the nineteen-pages of policies and procedures.

6) As you stated, "the committee members have provided sufficient justification and rationale in support of their evaluation of your performance on the preliminary examination." My appeal asked for the explicit details of the means and justifiable academic criteria they utilized in reaching their votes, and ethical and legal explanations. The advisory committee, the IIDP, the CGSRR and the Graduate School are responsible to justify the preliminary examination

process and to provide explanations of what, how and why in detail with regard to the preliminary examination. This was not happened.

7) With regard to the document entitled "Proposed Content and Format of the Preliminary Examination," your interpretation and understanding overlook the procedures put in place by my advisory committee.

(a) The student's advisory committee **did determine** the content and format of the written preliminary examination by approving such document in my case. You ignored the fact that they **did not follow** their approved content and format of the examination through this agreed upon contract document.

(b) Dr. Duft, as the chairperson of the advisory committee, informed me that he filed the approved document at your IIDP office in June 1999. It was both yours, as the Chair of the IIDP, and the advisory committee's obligation to make the proper judgment and determination whether the specification of that document was sufficient and appropriate, and to make corrections, clarifications, and/or additional amendments, if it did not meet the IIDP requirements and standards. Once no changes from you or the advisory committee in June 1999 occurred, then you automatically approved it and it became the legitimate academic standard I had to follow. This questionable document in your letters becomes a binding contract between myself and my advisory committee.

You are an official of **the educational service provider**, and are responsible for establishing the academic standard for me to follow. The document was approved by the body that was appointed by you to fulfill your institutional obligations. It is your obligation to honor and enforce it as part of the IIDP academic standard. I am a person working toward a degree by following the procedures and meeting the degree completion requirements. It was NOT my academic standard and claim; I was only part of the process of establishing it.

8) Regarding the authority and responsibility of the advisory committee, like all other rights and authorities, the advisory committee does not have absolute rights and authorities. The authority is permitting consistent with established policies. The advisory committee is NOT permitted to exercise its rights and authority in violation of student's rights, the Faculty Code of Professional Ethics, and other established policies.

I have the right to review and validate all dimensions and aspects of the preliminary examination process and results. My right of freedom of expressing views, opinions and validation of the preliminary examination process cannot be violated and inhibited.

Per the President's statements, I have not seen the advisory committee and the Graduate School fulfilling its responsibility by applying research-based information to explain what they did, how and why they did it, and how it was related to the educational objectives and curriculum of my Ph.D. program of study.

President V. Lane Rawlins stated, "As a public resource we have a responsibility to explain problems, develop solutions and **be accountable for what we do**." I am asking the Graduate School to reconsider its final decision, explain problems, and develop a proper solution. I again request the Graduate School to provide me the education information as I stated in the appeals of April 19 and July 12, 2000, in details and in writing. In addition to that, I would like the Graduate School to clearly and explicitly state the details of what, how and why the preliminary examination had been conducted, and its justifications:

1) State the Graduate School's, the CGSRR's, the IIDP's and the advisory committee's understanding of my Ph.D. program curriculum and its purposes. State the requirements and qualifications, and its operational definitions to fulfill the degree completion.

2) State the correct and proper purposes of the preliminary examination and its operational definitions, and the justification that these definitions meet the requirements of the degree completion. State the framework, measurement, and method of examination evaluation in according with operational definitions of the examination. State the content and format of the preliminary examination, constructively and scholarly.

3) State, describe, and justify the examination process, methods and academic criteria of evaluating the student's written, oral, and total performance of the preliminary examination. State and justify the results of the evaluation in each step through the final conclusion with academic, legal and ethical rationales the advisory committee used to support the conclusions.

4) As you informed me the advisory committee recommended that I not be given a second examination, I would like you to state and provide me what right and rationales the advisory committee used to make such a recommendation; and why such recommendation was not consistent with the ethical standard practice at this University, and what Dr. Duft, as the chairperson, told me before the examination.

Please provide me with the information requested in a timely manner and reconsider your decision following your total policies and procedural policies.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: Dr. Ron Hopkins, Attorney General

December 14, 2000

Dr. Ronald Hopkins, Interim Provost
The Office of Provost,
Washington State University
Pullman, WA 99164

Dear Dr. Hopkins,

I have received the Dean of the Graduate School's letter dated October 10, 2000, denying my appeal. I strongly believe the Graduate School ignored procedural irregularities in the preliminary examination process and in the CGSRR's utilized appeal process. The questioning evaluation of the examination and the procedural irregularities as presented in the appeal and corresponding documents have not been answered and justified, nor a proper solution developed. The requested information regarding my preliminary examination was not provided to inspect, review, and validate for its accuracy and true merit. I also believe the Graduate School mishandled my appeal and violated the University policies and relevant regulations. I am asking the University to consider my case in four folds:

I. The irregularities in the preliminary examination process.

My appeals of April 19 and July 12, 2000, were brought before the Graduate School with two issues: (i) the appeal of the result of the preliminary examination and (ii) the violations of University rules, policies, and regulations including the Graduate Student Code under the sections of student's rights and expectations of departments and programs, faculty advisors and mentors; and the ethical, academic standards and conducts as stated in the IIDP Faculty/Student Handbook and the Faculty Manual. The advisory committee, the IIDP, and the Graduate School must follow the policies and procedures in effect at the time of the student's initial admission (Spring 1993), and the

departmental requirements in effect at the time the student filed the program (April 12, 1999). The exception to the policies must be at a request in writing to the Associate Dean of the Graduate School (The Graduate School Policies and Procedures, pages 2 and 17). The major irregularities in the preliminary examination can be briefly summarized:

1. As instructed by the IIDP Faculty/Student Handbook (pages 7, 15-17), the advisory committee already approved: (i) a program proposal for approval by the Graduate Studies Committee, (ii) a plan and structure of the actual content and format of the preliminary examination, and (iii) a reading list for the preliminary examination. These approvals were established in May 1999. The advisory committee **violated** its established rules and **did not** properly follow the approved reading list and the approved structure of the preliminary examination when they conducted the preliminary examination process in January and February 2000.

2. The contents of the written examination were changed without the approval of the entire advisory committee. The add-on-later content of the Farm Credit System was not in the scope of the coursework as outlined in the approved program of study. The add-on-later contents of Empirical Methods in Finance and the Farm Credit System were not part of the actual content and format of the preliminary examination established in May 1999. The advisory committee is also responsible for writing exam questions "collaboratively as a committee," as specified in the handbook page 7, not as individuals. The changes of rules in the on-going process were not in "good faith" to the published policies and procedures given to me.

3. The evaluation of the January 2000 written examination did not follow the specific instructions as stated in the IIDP Faculty/Student Handbook pages 15-16. The evaluation result was also drawn from the questionable portions of the contents, and did not include the two written exam portions, which had been credit-granted toward the

satisfactory result of the written examination. I believe the exam questions and evaluation were not properly constructed with clearly stated, justifiable academic criteria. To date, no explanation in this regard has been provided regardless of how many times I have asked for reasons and grounds for considering my answers improper to what was asked.

4. The chairperson of the advisory committee ignored the student's concerns with the result of the January 2000 written examination. The chairperson denied the student's request to have the advisory committee reconsider the discrepancies of the evaluation of the written examination, and develop a proper solution before the oral examination could proceed. This conduct created an improper environment for the oral examination and resulted in a significantly psychological impact on the student's performance before and during the oral examination. The chairperson forced the oral examination to proceed without using proper discretion and judgment as his "obligations in the light of responsibilities to the student, to the profession, and to the University" (Faculty Manual, page 26).

5. I entertain whether the process of writing the exam questions and evaluation criteria excogitated proper methods of academic measurement and evaluation. For example, the questions on finance theory referred to the content of a television program broadcasted on the PBS channel during the week of the oral examination and the student was not informed, nor instructed to view it before the exam date. These kinds of questions were not fair, proper and justified because the student was asked to respond to a specific context/ situation in the television program, which was carefully viewed by a faculty, but not by the student. How could anyone answer a question or make a comment on the materials he/she never had the opportunity to carefully review?

Nevertheless, I did my best under such improper exam conditions. This improper conduct was not addressed and remedied in the appeal process, but was simply ignored

by the IIDP and Graduate School administrators and the CGSRR. All exam questions and answers should be put upfront on the table, reviewed, and evaluated by the proper, clearly justifiable academic criteria, using scholarly judgment of professional educators.

The details of these irregularities and arguments were presented in the appeal documents dated April 19, June 9, July 12, September 1, October 5, and November 6, 2000. These irregularities and violations were not ethically, academically and legally considered, explained and justified in the letters of September 19, October 10 and November 13, 2000. These irregularities suggest the faculty abused their discretion. The Dean's final decision of October 10, 2000, provided no response to the appeal issues, but rather to the selective explanations to excuse the irregularities in the appeal process. No proper solution was developed or the accountability demonstrated. The Chair of the IIDP, the CGSRR, and the Dean of the Graduate School simply ignored them.

Without academic explanation and justification of the irregularities, I believe the evaluation of the preliminary examination was improper, unfair, illegal and unethical. The failing result of the examination did not accurately reflect the true academic merit of the student. With proper discretion and remedy, the true merit of the evaluation can be constructively seen through the facts and rationales below.

1. The established content and format of the preliminary examination consisted of four equal-weight portions of the preliminary examination—Microeconomic Core Exam (Dept. of Economics), Economic Theory Preliminary Exam (Dept. of Agricultural Economics), Finance Theory (Dept. of Finance), and Agribusiness management and Marketing. The written and oral examinations were also proportionately equally weighted. The total performance of the preliminary examination should be explicitly constructed and scholarly evaluated with respect

to the approved program of study including clearly stated, justifiable academic criteria and procedures.

2. The facts are: (i) the advisory committee granted credits for the two exam portions of Microeconomic Core Exam and Economic Theory Preliminary Exam toward the satisfactory result of both written and total performance of the preliminary examination, and (ii) the oral questions were not given under these two academic portions in the oral examination. The examination committee already satisfied the student's total performance of these two academic portions. These two credited portions warranted a passing satisfactory result of the two underlining academic disciplines, out of the three academic disciplines. It is clear that I earned 50% satisfactory result of the total performance of the preliminary examination from these two exam portions, and by not including these two academic portions in the evaluation, the advisory committee violated the will and requirement of the approved program of study.

3. The two remaining examination portions--Finance Theory, and Agribusiness management and marketing were each accounted for 25% of the total performance of the preliminary examination. The written examinations on these two portions were given in January 2000. The content of the Farm Credit System replacing the content of Agribusiness management was not legally and ethically used to the benefit of the student. In the same content, the Empirical Methods in Finance was also not legally added on to the Finance Theory portion.

The proper evaluation shall be based on only the legitimate portions of the examination. The two add-on-later contents shall be tossed out as a fair remedy to the evaluation. The student should not be double punished for the faculty's change in procedures, which deviated from the established content and format of the examination. In the oral examination, I strongly believe I gave sufficient, fair, and reasonable answers under the unpleasant environment and improper conditions. Dr. Duft stated that (i) my answers

in the written examination were correct, but not sufficient, and (ii) my answers in the oral examination were correct, but it took too long to get the correct answers. There was no time limit for the oral examination. I fairly responded to the questions asked which had no specific measurable analytical reference to what constituted description. The correct answers sufficiently justified at minimum a marginal passing level. After a proper remedy is considered, I am strongly confident I have a passing result on the two remaining written and oral exam portions.

Since the details of what, how, and why the preliminary examination had been conducted were not disclosed, explained, and justified to the student, I cannot address and make any argument here. Lacking details for reasons for failure of January 2000 written and oral examinations in each question and answer, I believe there are still no substantial academic reasons to support a failing result of these two remaining portions of the examination, therefore, a passing result of the total performance of the preliminary examination would be warranted. This rationale was based on the structure of the established content and format of the examination and the contribution of each academic component/portion to the total performance of the preliminary examination. Thus, I strongly believe the unanimously failing result of the total performance of the preliminary examination was not academically justified and of sound structural standards.

II. The irregularities in the appeal process.

I strongly believe the Graduate School mishandled my appeal. The appeal issues were not carefully, scholarly considered, answered, and justified. Each step my appeal went through produced more irregularities and questions. I also brought up my concerns and questions in each step of the process, but none was clearly answered and resolved.

1. I brought the appeal in writing before the Chair of the IIDP, Dr. Karen DePauw, on February 15, 2000. Dr.

DePauw did not review the appeal as promised and could not even find the appeal document when I followed up on it on March 29, 2000. Dr. DePauw kept it for more than five weeks without review as an appeal and told me to file an appeal before the Graduate School instead.

The Faculty Manual page 16 states the duties of the department Chair that "it is the department Chair's responsibility to execute the policies determined by this procedure. When this is not done, he or she should notify the administrative superior and the members of the faculty of the action being taken and the reasons therefore." The conduct of the preliminary examination is a matter of the departmental level as stated in the Graduate School Policies and Procedures page 14, "The content and conduct of a preliminary examination is the responsibility of the Graduate Faculty of a degree-granting unit and should be administered by the chair of that unit or someone delegated by the chair."

It was clear that the chairperson of the advisory committee did not follow the proper procedures as instructed in the IIDP Faculty/Student Handbook. Dr. DePauw, as the department Chair, ignored the committee's violation of the specific instructions in the handbook and chose not to enforce the academic standard and requirements of the IIDP. Dr. Karen DePauw was expected to properly assume the two administrative roles, not to select roles to act. Common sense rules that the problems could have been solved and a proper solution developed at the departmental level; it did not need to come this far and making the situation more complicated and difficult. The bypassing of the departmental review suggested prejudice against my case and neglect of the department Chair's responsibility. This states the irregularity in the appeal process at the departmental level. The department chair did not use discretion and judgment to correct the procedural irregularities in the academic process.

2. The Associate Dean of the Graduate School mishandled the appeal case. The details were presented in the letters dated June 9, July 12, July 24, and November 6,

2000. The Associate Dean violated the adjudication procedure of rights and responsibilities under the Graduate Student Code by not referring the appeal case to the CGSRR within 30 days as of April 19, 2000, but reviewed and deliberated the appeal, and rendered a recommendation by himself. The adjudication procedure of the Graduate Student Code instructs the Associate Dean to "handle" the appeal; it does not authorize him to act on behalf of the CGSRR. Nonetheless, his reviews and decisions did not demonstrate correct and proper understanding of the appeal issues and the nature of the student's program of study, but created more procedural irregularities. Although Dr. Hill is a highly respected and experienced faculty member, his reviews and decisions mislead the context of the appeal and contaminated the integrity of the appeal process. The intentions behind his actions are questionable because of improper handling of the appeal process.

3. The CGSRR process produced more procedural irregularities as stated in the letter of November 6, 2000, page 2-3. The irregularities revealed by the Dean's letter of October 10, 2000, suggested the CGSRR did not fulfill its obligations with respect to the rights of the graduate student and faculty, the rights of all parties to review and address allegations, and rights to a fair hearing. In the meeting with the CGSRR on September 1, 2000, I was also asked questions about my background before the admission to the IIDP. These questions were not relevant to the appeal issues. I believe the CGSRR was provided with improper, inaccurate, prejudiced, and unrelated information for its deliberation. As a result, the opinion of the CGSRR did not reflect the correct, proper understanding of the appeal case and was inconsistent with the facts.

The CGSRR also ignored the fundamental issues of the appeal including the violations of the student's rights, relevant university policies, adjudication of rights and responsibilities; the failure of the department, advisors, and mentors to meet the expectations of the Graduate Student

Code; and the improper evaluation procedure of the preliminary examination. The violations of rules were also presented in the appeal document submitted to the CGSRR on September 1, 2000. None was addressed, explained, and justified, nor was a proper solution.

4. The final decision of the Dean of the Graduate School was irregular and in question as presented above and in the letter of November 6, 2000. I find the final decision made by the Graduate School to be unacceptable based on the unresolved, unexplained, and unjustified irregularities:

(i) To date, the appeal issues regarding the evaluation of the preliminary examination have not been answered, explained and justified as to what, how, and why the preliminary examination had been conducted, regardless of the number of irregularities in the examination process. The academic explanation and justification had not been provided to support whether the result of the preliminary examination reflected the true merit of the student's academic performance. Nothing in the corresponding letters demonstrated such effort.

(ii) The Associate Dean's decision and reviews did not properly answer and justify the appeal issues as stated above and in the letters of June 9 and July 12, 2000. The Dean also discarded the Associate Dean's opinions and referred the appeal to the CGSRR as requested in the letter of July 12, 2000, but the final decision included what was discarded.

(iii) As stated above, the CGSRR utilized a process in conflict to published adjudication procedures. The review and decision did not reflect the accurate understanding of the fundamental issues of the appeal, and were inconsistent with the facts, but the Dean adopted it anyway.

(iv) Per President V. Lane Rawlins's Fall 2000 address regarding the faculty's rights and responsibilities as quoted in the letter of November 6, 2000, and the Faculty Code of Professional Ethics, "They make every reasonable effort to foster honest academic conduct and to ensure that

their evaluations of students reflect their true merit." The advisory committee, the IIDP, the Graduate School, and the CGSRR considerably first carry a burden of proof, explanation, and justification to the student. Then, the student should be provided a rebuttal opportunity to express his opinions and arguments to defend his belief as correct. The final decision shall then be drawn from all proper, fair information in details with the ethical, legal and academic rationales. This did not happened.

Moreover, the evaluation of the preliminary examination is an academic matter, which is subject to a set of clearly stated justifiable criteria, procedures, rules and regulations, and a rigorous validation accordingly and openly. I asked the Graduate School all along to lay out the details. I have received nothing from the Graduate School in this regard.

The credibility of the statement, "I find insufficient evidence to lead me to a different conclusion than that reached by the IIDP Graduate Coordinator and the CGSRR," is in question. The decision shall NOT be made based on the opinions drawn from improper information and procedural irregularities. I should have received a more constructive, academic oriented rationale and justification.

III. The violations of University policies, rules and relevant regulations

The violations of University policies, rules and relevant regulations were also reflected from the irregularities above and in the appeal documents before the Graduate School and the CGSRR. It can be summarized as follow:

1. The irregularities as presented above suggest Dr. Kenneth Duft failed to fulfill his responsibilities and obligations as the Chair of the Advisory committee to uphold the IIDP academic standards as established by the advisory committee and specified in the IIDP Faculty/Student Handbook (pages 6, 7, 11, 15-17). His conducts regarding the preliminary examination did not follow the specific

instructions, and the expectations of faculty advisors and mentors were not met. The conducts violated the student's rights (the Graduate Student Code, pages 2-6). I do not see how his conduct met his faculty responsibilities as specified in the Faculty Manual pages 24-26.

2. The IIDP administrators also failed to properly instruct and enforce the chairperson of the advisory committee to conduct the preliminary examination following the specific instructions published in the IIDP Faculty/Student Handbook and meeting the requirements of the approved program of study.

The instructions of the IIDP Faculty/Student Handbook are provided as a fair standard procedure for all students, faculty, and the institution participating in the IIDP. By not following the specific instructions, the advisory committee, the IIDP and the Graduate School violated the Graduate School and departmental policies. Therefore, the academic standard was not upheld and the student's rights were violated.

3. Under the Graduate Student Code (pages 2-6), the expectations of department and program, and the student's rights shall be maintained. The department failed to establish the criteria for termination of students from the program and properly informing the student upon enrollment. To date, the IIDP has not provided written notification of termination from the doctoral program and information regarding the result of the preliminary examination.

By the letters dated April 26 and 27, 2000, the Graduate School terminated the student status from Washington State University effective May 5, 2000, with incorrect information and **unpublished policy** (see the letters of May 1 and 4, 2000). As stated in the letter dated May 4, 2000, the Graduate School claimed that "after the decision is made that the student has failed the preliminary examination, the committee is allowed two options: retake a second examination or terminate from doctoral program." This

claim does not appear in either the IIDP Faculty/Student Handbook or the Graduate School Policies and Procedures.

When a student fails the first examination, there is no provision under both statutes to prohibit him from a second examination. The Graduate School also does not have authority to terminate the student enrollment from Washington State University when he fails the first examination. Since the appeal of the result of the first examination was underway, there was no legitimate basis for termination action. The Graduate School Policies and Procedures page 2 state "Graduate School policies are established by action of the Graduate Studies Committee and the Faculty Senate, and approved by the Provost." The Faculty Manual page 10 states "The Dean of the Graduate School is responsible for the **administration** of the graduate programs in all areas of the University. Specific responsibilities include general administration of the Graduate Faculty other than those organized within a college." The University statute does not authorize the Dean to write rules or policies, but administer and enforce them. The Dean is neither an autocrat nor a legislative body. The termination suggested improper use of discretion and violated the student's right and the expectations under the Graduate Student Code, and the University policy of equal opportunity in education and equal protection.

The advisory committee also violated the University policy of equal opportunity in education when recommended I be terminated from the doctoral program. The criteria for the termination were not established at the time the student's initial enrollment in the program. The IIDP Faculty/Student Handbook (pages 7, 15, and 16) grants no provision under the responsibilities of the advisory committee to recommend such a termination.

4. As presented above, the irregularities of the CGSRR's conduct was unclear as to what administrators were interviewed, who the selected faculty members were, what information the CGSRR obtained from each, and

whether the information was accurate or prejudice. The Dean of the Graduate School did not clarify these issues, but adopted the recommendations of the CGSRR as accurate to justify her decision.

5. The Graduate School failed to comply with the Family Educational Rights and Privacy Act of 1974. I repeatedly requested the Graduate School to provide me the education information as stated in the appeals of April 19, July 12 and November 6, 2000, in details and in writing. To date, it has been longer than 45 days from the initial request, and I have not received any of my requested information and nor the reason why the Graduate School was not able to meet the specific time frame.

By not releasing and disclosing the requested education information, the Graduate School inhibited the student, as a member of the University community, to exercise his right of freedom of expression, as stated on page 24 of the Faculty Manual, with regard to his academic performance. The Dean's action suggests violations of the federal laws.

6. I believe that all above violations are not permitted according to the University rules, policies, and regulations including the Faculty Manual and the Faculty Code of Professional Ethics. I believe that the ignoring the irregularities in the appeal process and in the preliminary examination suggest the Graduate School intentionally avoided the request to openly and academically reevaluate the preliminary examination and develop a proper solution regardless of what the violations are. Per President Rawlins' Fall 2000 address, the accountability of the faculty should be part of the solution to the appeal case. Since these violations and irregularities remained unanswered, unexplained, and unjustified, it leads me to believe that I was discriminated against based on a personal creed of the faculty and administrators, which deprives me of the right to have equal opportunity in education, equal protection, and be delivered the educational services from a public institution as published

which I paid for. I also have civil rights to access the same quality and treatment of education from the University as other students.

IV. A request for consideration of the appeal, education information, full refund of tuitions and fees, and compensation

Washington State University is a public, educational service provider governed by both state and federal laws, doing business of higher education. Upon admission and enrollment, the University has imposed on students all rules, policies, and regulations. The students are obligated to follow them and responsible for paying all tuitions and fees. In return, the University promises to provide educational services at the quality and descriptions as specified in the University publications, and facilitate the student's learning development with proper, ethical practices and learning environment. The University is obligated to provide the student as a consumer and community member, the educational services as described in the Graduate School Policies and Procedures, and the IIDP Faculty/Student Handbook. The University also commits to provide the high quality of faculty and administrative conduct as characterized in the Faculty Manual and the Administrative and Professional Staff Handbook. As a public resource, by state and federal laws, the University is obligated to provide its services with the equality of opportunity, protection, access and treatment to all, and accountable for its failure.

1. President V. Lane Rawlins stated, "As a public resource we have a responsibility to explain problems, develop solutions and **be accountable for what we do**." I am asking the University as follow:

(i) To consider the evaluation of the preliminary examination, which was never properly, academically reviewed and justified in the appeal process, and to examine the irregularities in the appeal process and the examination process affecting the fair and proper academic evaluation result.

(ii) To explain problems, develop a proper solution, and demonstrate its accountability in my case. The consideration shall include academic explanation, justification and rationales in response to the sets of information inquiry listed in the letters of April 19, July 12, and November 6, 2000.

(iii) To consider all the violations and procedural irregularities with respect to all University policies, rules, procedures and relevant regulations in effect at the time the program of study was filed and of the student's initial admission, and execute a proper discretion in a good faith and reputation of the educational institution.

2. Under FERPA, I request the University to disclose the information obtained, and the appeal process utilized by the CGSRR for inspecting, reviewing and validating its accuracy and truthfulness. I also, again, request the University to release the "education records" with regard to my preliminary examination. These records include the requested information as indicated in this letter and the letters of April 19, July 12, and November 6, 2000 and all recommendations, evaluations or comments concerning the student that are provided in confidence, either expressed or implied, as between the author and the recipient, files, documents and other materials, which contain information directly related to the CGSRR process and the preliminary examination in each step from the beginning to the end of the process. The education information shall clearly and explicitly state the details of what, how and why the preliminary examination had been conducted, and its justifications in all steps in the preliminary examination process. In addition, I also request the University to clearly state: (i) the purpose of academic measurement behind the question construction of all written and oral exam questions with respect to academic principles, especially commonly accepted principle, such as Bloom's taxonomy, and its answered keys and expectations, and (ii) my answers to each

question and explanation how it did not satisfy the passing criteria.

3. I ask the University to discard the recommendation of the advisory committee that my enrollment be terminated and the Graduate School's action that I be dropped from Washington State University because, as above, the advisory committee and the Graduate School abused its discretion and violated the University rules, policies, and regulations including the policy of equal opportunity in education.

4. Without the irregularities and with proper academic criteria and standard procedure, I strongly believe a passing result of the preliminary examination will reflect the true merit of the student's total performance of the preliminary examination. Since I strongly believe there was no possibility I could fail in the preliminary examination, I am asking the University to overturn the decisions of the advisory committee, the CGSRR, and the Dean of the Graduate School, and grant a passing result of the total performance of the preliminary examination. I also ask the University to develop a proper solution facilitating and supporting me to advance my study toward the completion of the degree program.

I do want the University to acknowledge a student's voice, perhaps representing many other victimized students of the title of academic freedom, credibility and integrity in the past, present, and future:

(i) My suffering experience at WSU is beyond the tolerance level a human student can endure anymore. If you were in my shoes, or I were your son/daughter or relative, you would have touched a deep feeling of your heart under such treatments from the University. I am just a human student like the others having warm heart, feeling, dreams, hopes, wishes, endeavor, and ambitious future.

(ii) I do understand that faculty members usually do not like a student telling them what to do. I did not tell any faculty to do his/her duty. I expect faculty to respect and maintain the student's legal rights, especially the rights

granted by the rules and laws, and the right to inspect, review and validate the academic process, result, and conduct in association with his academic performance. It is deeply painful when there is no other choice, except begging for the legal rights to be maintained.

(iii) I want President Rawlins to know that I admire his Fall 2000 address very much. His rationales and principles gave me and other University community members great value to follow at the best effort. In accordance to these words, it is imperative that graduate chairs have an effective relationship with their students.

Thus, if the University chooses not to overturn the result of the preliminary examination and grant a passing result as requested, I am not satisfied with the provided educational services due to the failure of delivering the quality of educational services as described. I request the University to do and be accountable for its failure as follow:

(i) Immediately release a full refund of tuitions and fees I paid from my initial admission, Spring 1993, to the date the University made an official decision against my case. These tuitions and fees include all those paid by all types of benefits through tuition waivers programs in association with my temporary on-campus employment and with a privilege of other financial assistances as well as the other sources of funds paid to the University based on my enrollment.

(ii) Compensate the lost of opportunity costs of all my living expenses over the period of my study at WSU from my initial admission, Spring 1993 to the last date the University releases the requested full refund, and at the average cost estimated by the Graduate School; and not having a professional career with the doctoral degree over the next 30 years at the average salary the University paid to the faculty members in the three departments--Economics, Agricultural Economics, and Finance.

(iii) Compensate the impact on my psychological, mental and physical health deriving from the stress caused by

the improper conducts of the University personnel and the failure of delivering the educational services as promised, over the average life expectancy.

(iv) My letter also serves as an official complaint brought before the Provost to proceed according to all complaint procedures relevant to the issues addressed in the appeal documents. Please also advise if any other procedures need to be conducted in this regard.

Please feel free to contact me for further information. I strongly feel that both cultural and language differences have hindered progress toward a positive result of my appeal, a broad conceptual understanding needs to be adopted. Thank you for your assistance and consideration.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: The Attorney General

March 15, 2001

Dr. Herbert Hill
Associate Dean of the Graduate School
Washington State University
Pullman, WA 99164

Dear Dr. Hill:

Thank you for your letter dated February 12, 2001, but the requested documents were incomplete. The requested documents received were: (1) Dr. Hill's email dated May 5, 2000, and the committee letters/emails of five committee members in responding to Dr. Hill's questions, and (2) a memorandum of the Graduate Studies Committee Representative dated February 11, 2000, plus other documents which I did not request.

Again, I am writing to request, the University release ALL requested educational records as indicated in my letters dated April 19, July 12, November 6 and December 14, 2000, which were used to evaluate my status and make decisions:

- Documentation of questions, my answers, and the answer keys and criteria to justify my passing or failing of each question in both oral and written preliminary examinations.
- Documentation and criteria of justifying overall performance of the preliminary examination.
- Documentation of materials and interviews used by the Graduate School to make their decision.
- Documentation of materials and interviews used by the CGSRR to make their recommendation.
- Documentation of materials and interviews used by the Provost to make his decision.

By FERPA's definition, the "education records" shall include ALL materials, comments, and recommendations directly related to the academic evaluations, reviews and judgments in ALL procedures and levels. At this point, I am also requesting clarifications on the released documents as follows:

1. The copies of the committee voting ballots, hand written notes of the representative and committee members during the oral examination and other documents related to the preliminary examination (written and oral) were not released. The voting ballots existed. The hand written notes of the representative and committee members during the oral examination, and other documents related to the examination preparation, formulation, and evaluation were also created and existed. I request the Graduate School release ALL for my inspection and further procedures.

2. Dr. Hao Zhang's written response to your email of May 5, 2000, was missing. Does his written response to your questions exist? If it existed, I request the Graduate School release his comments. If it did not exist, I request a written explanation why you made your deliberations and final

decisions as of your letters dated May 19 and June 28, 2000, without his comments.

3. I request the University release all email/ memorandum communications between Dr. Kenneth Duft and committee members and other University officials with regard to the preliminary examination, especially, Dr. Kenneth Duft's memorandum dated January 26, 2000.

4. Dr. Duft's memorandum in responding to your questions (email dated 5/5/00) has no date. It is irregular for an experienced person to make such an official memorandum without the date. I request a clarification whether the original copy has no date, and on what date you received this memorandum from Dr. Duft. As normal practice on other documents, the Graduate School always stamps with the date received. However, none of the written responses to your questions had been stamped with the received dates. I request an explanation why the Graduate School did not treat these official memorandums as the other documents. If they were stamped on the envelopes, I request the Graduate School release the copies of the stamped envelopes.

5. Per Dr. Duft's answers to your questions, I request an explicit clarification of the following:

1) With the statement, "...copies of textbooks and related materials□," what are the textbooks, and for which classes on my approved coursework do they relate to for my studies? What are the "related materials"? On what date were these textbooks and related materials given to me for the examination preparation?

2) With the statement, "□had earlier failed several portions of written qualifying examination," what are the "several portions of the written qualifying examinations" Dr. Duft is referring to, and on what dates did I take these examinations? How did these examinations relate to the disputing preliminary examination and the decision of the advisory committee made on February 11, 2000? What proportions did these failing results contribute to the final

decisions of Dr. Duft and the advisory committee on the overall performance of the preliminary examination?

6. What were the advisory committee's opinions with regard to the approved content and format of the examination in May 1999? Why did they not follow their established rules and the IIDP Faculty/Student Handbook in the evaluation of the examination? What evidences and rationales did you, the Graduate School, CGSRR and the Provost use as the bases for the decisions and what rationale was used to validate any inconsistency of statements from both sides in the appeal process? I request the University disclose all documents, opinions, recommendations and justifications in this regard, including all written and email communications.

7. What were the opinions and justifications of the advisory committee, the IIDP program's chair and coordinator, the Graduate School, the CGSRR, and the Provost on whether the evaluation of the preliminary examination (written and oral) covered the student's three underlying disciplines/interest areas from the three departments and was made by "clearly stated and justifiable academic procedures, rules, and regulations"? If these opinions and justifications were not created or did not exist in the appeal process, I request a written clarification and confirmation on this fact from the University.

8. What were the "clearly stated and justifiable academic procedures, rules, and regulations" governing the preliminary examination, which the advisory committee used to evaluate the preliminary examination? What academic, ethical bases and rationales did the IIDP, the Graduate School, the CGSRR, and the Provost use to justify their decisions? I request the University explicitly state this in writing.

9. According to the Provost's letter dated February 1, 2001, I was "afforded due process for this review of an academic decision." I request the University release ALL the

"education records" with regard to the "due process" of the academic decision including the following:

1) When and where did the due process of the review of the academic decision take place?

2) What committee did conduct the review of the academic decision? What were the committee member's academic qualifications and expertise in making an academic review and judging the academic quality of the preliminary examination in the underlying three academic disciplines of the student's program of study?

3) What were their opinions and recommendations?

4) Why was I not notified and given an opportunity to participate in this "due process"?

Please feel free to contact me if you require additional clarification of my requests. I am sure this paperwork will be forth coming within 30 days as the materials should be readily available.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope.
cc: Office of Attorney General, Provost, President

December 7, 2001

Dr. Ronald Hopkins, Interim Provost
The Office of Provost,
Washington State University
Pullman, WA 99164

Dear Dr. Hopkins:

This letter is in regards to your academic decision as stated in your letter of February 1, 2001. The content of the letter did not express accurately my requests and appeal and also did not explicitly show academic justification. As stated in my letter of March 15, 2001, documents disclosed by the

Graduate School were incomplete and as of today, university officials have not provided the requested documents. Until I can properly review and evaluate all documents requested, I remain in the dark as to the integrity and quality of decisions made to date. I continue to question the procedures and decisions.

This letter also requests enforcement of your letter of February 1, 2001, to Dean Karen DePauw stating to provide me with copies of existing educational records. This has not been fulfilled and I ask for immediate release of all requested documents which are subject to FERPA. By FERPA=s definition, this includes all documents that have been created and used in the academic evaluations, the preliminary examination procedure, appeal procedures, and your review which these documents were part of and used in rendering the University's final decision.

The following is a correction to some misunderstanding as referenced in your letter:

1. I have not pursued a doctoral program in the Individual Interdisciplinary Design Program. My doctoral had nothing to do with that program.

2. Under FERPA, I did not request university officials to create any new documents or recreate any documents for/or to support the previous conducts of university officials. I requested the university release all the documentation of the existing academic evaluations.

3. You stated that, AFERPA does not require that the University state why it asked individual questions, or that it explain how it arrived at a decision based upon a record. To the extent you would like such explanation, you could seek it by speaking with members of your doctoral committee. I question if you had the complete picture of my appeal and my understanding and reading of the university's policies and obligations.

I did seek an explanation from Dr. Duft, as the chairperson. Dr. Duft excused himself from speaking for other committee members and asked me to discuss my

concerns with individual committee members. He also advised me to seek an explanation and challenge the committee's decision through the appeal process. I spoke with individual committee members who excused themselves on discussing the committee's evaluation and decision and told me to discuss it with Dr. Duft. Now you, as a university representative, excuse yourself and asks me to speak with individual committee members. This appears to be a run around forming a circle of neglect on behalf of the university's ethical obligation to the student=s learning. Yes, this student who has paid tuition for educational service. My continued requests for explanations and documentation has followed the advice of those who are in authority to provide this information.

Washington State University, a public institution, has legal and ethical obligations for public disclosure and clarification of its conduct upon requests, thus, my belief the university has legal and ethical obligations to clarify its conduct with regard to the evaluations of my academic performance. The disclosure of the academic documents as requested by the student is a show of good faith, trust, and integrity of this public educational institution. Unless there is reason to hide documentation, the University has nothing to fear by disclosing good, high quality academic conduct. By withholding the documents, the university applies it may have violated certain laws as well as imply possible inappropriate or misconduct of faculty with regards to the academic evaluations university officials used to decide my case.

My requests continue and I again ask for explicit clarification of the following findings:

4. Your February 1, 2001, letter stated that, AI find no irregularity in the procedures used by the Graduate School.@ My appeal includes four main procedures: A) the preliminary examination, B) the appeal procedure to Dr. DePauw as the chair of the program, C) the CGSRR=s procedure, and D) the Graduate School=s procedures. My requests are: a) an

explanation of what you define in the term "irregularity" in the procedures, b) what regular procedures you used as the basis of your review and decision, c) how you justified which procedure was regular, and d) were all four main procedures reviewed and, if so, provide an explanation of the academic justification for each main procedure.

5. According to the Faculty Code of Professional Ethics, explain the conduct of the faculty and university officials in relations to my appeals, state why state laws, federal laws, and university policies were not violated, and state why the conduct has your full approval.

6. Stated also in your February 1, 2001, letter that I were afforded due process for this review of an academic decision. I ask for clarification of due process according to university legal and ethical standard process.

This letter again requests and serves as my official notification that the University MUST release ALL requested educational records which are subject to FERPA as indicated in my letters dated April 19, July 12, November 6, and December 14, 2000, as well as March 15 and June 5, 2001. By withholding the requested documents, you, as representative, and Washington State University officials have violated state laws, federal laws, and university policies.

I request that you and responsible University officials fully and completely comply with the laws and policies. I request the University fulfill its obligations and expectations as stated in the Graduate Student Code, the Faculty/Student Handbook, Faculty Manual, and the Graduate School Policies and Procedures, as well as any other relevant university policies and regulations. I also reserve all rights to further pursue the appeals in all available juridical procedures.

Brought before the Provost by my letter of December 14, 2000, was my complaint of faculty misconduct. Your February 1, 2001, letter did not mention what steps are being used to exam the complaint. The faculty conduct complaint was also excluded by the Dean of the Graduate School from the appeal process. By procedures stated in the Faculty

Manual, I ask to be informed of the status of my complaint. If no action has been taken, please explain what procedures will be used to follow up on the complaint.

I request a response to all issues stated in this letter and my previous letters. If I receive no response to the raised issues and/or objections to any particular statements in all my appeal and communication letters, I will then acknowledge as fact there are no objections to what has been stated in my letters to date.

You may contact me for any additional clarification of my requests.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: Attorney General, President

November 9, 2002

Dr. V. Lane Rawlins, President
422 French Adm. Bldg.
Washington State University,
Pullman, WA 99164-1046

Dear President Rawlins:

This letter serves as my petition before you in regard to the Provost's decision of November 6, 2002, responsive to my request of September 9, 2002. This letter also serves as my written notification to the University to immediately and fully comply with the Public Disclosure Act. RCW 42.17. I believe the Provost simply ignored the University's obligation to comply with the state law. I do not find supporting evidence and professional analysis with proper reference of laws and regulations.

In the Provost's decision of November 6, 2002, the statement, "She informs me that she has responded to your

request, and that she believes all administrative avenues for relief as to the public records request have been exhausted," is mislead. The Provost simply informed me what he was told by the Public Records Officer. Such information reflects his personal speculation and belief. No explicit decision was made. No constructive evidence and professional analysis was provided. The statement suggests the Provost did not thoroughly examine and understand the actual status of the issue brought before the University. The University's decision and action shall not be simply based on the belief without factual verification. The facts are:

1. I filed seven public records requests before the University dated May 23 (PPR#02-55), May 31 (PPR#02-56), June 17 (PPR#02-??), July 6 (PPR#02-84), July 11 (PPR#02-??), July 15 (PPR#02-91), and July 30 (PPR#02-92), 2002.

2.The University acknowledged the receipts of the requests dated June 3, June 6, June 24, July 9, July 19 and August 6, 2002, responsive to the requests dated May 23, May 31, June 17, July 6, July 15, and July 30, 2002, respectively. The University did not acknowledge a receipt of my public records request of July 11, 2002.

3. The University provided itemized responses to the requests of May 23, May 31 and July 15, 2002, with Ms. Pauli's letters dated June 10 and 24, as well as July 3, 15, 19, and 22, 2002.

4. As indicated in Ms. Pauli's letter dated June 24, 2002, the requested records responsive to the request of June 17, 2002, were scheduled to release by July 8, 2002. I have followed up this request as indicated in my letters to Ms. Lamb dated August 5, 2002, and Dr. Bates dated September 9 and November 4, 2002. To date, I have not received any record responsive to this request. The University provided no explanation and notification of time extension.

5. As indicated in Ms Pauli's letter dated July 9, 2002, the requested records responsive to the request of July 6, 2002, were scheduled to release by July 23, 2002. I have

followed up this request as indicated in my letters to Ms. Lamb dated July 17 and August 3, 2002, as well as to Dr. Bates dated September 9 and November 4, 2002. The University provided two responses dated July 9 and 19, 2002. To date, I have not received any record responsive to this request. The University provided no explanation and notification of time extension.

6. As indicated in Ms Pauli's letter dated August 6, 2002, the requested records responsive to the request of July 30, 2002, were scheduled to release by September 6, 2002. I have followed up this request as indicated in my letters to Dr. Bates dated September 9 and November 4, 2002,. To date, I have not received any record responsive to this request. The University provided no explanation and notification of time extension.

7. The University provided no response to my request of July 11, 2002, and my follow-up letters dated August 5, September 9, and November 4, 2002.

With the above facts, I believe the Provost and the Public Records Officers have failed to comply with the Public Disclosure Act. Therefore, I request the University immediately and fully release the requested public records and provide explicit explanation for such delays. I also request you provide explicit explanation and rationale with your decision. In such case that this will take time longer than five working days, I request you notify me when I will receive your decision. All relevant correspondences were copied to you. If you require additional information in this regard, please feel free to contact me in writing.

Although I believe this matter can be solved within your administrative authority, in such case that you fully affirm the Provost's decision of November 6, 2002, and the procedure in this regard is fully exhausted at the President's Office, I request you proceed on the following:

1. Service me your final decision as I brought before you above in a timely manner.

2. This letter also automatically serves as my petition before WSU Board of Regents to review your decision in this regard. It is my understanding that I have a right to access to the WSU Board of Regents through you as the Secretary of the Regents.

3. I request you facilitate all relevant documentation for WSU Board of Regents' consideration. All documentations are in custody of the University. However, if you have any question in this regard, please feel free to contact me.

4. I request you notify me all necessary procedures in this regard.

Finally, again, I would also like to notify the University that NO record, either whole or parts of the requested records, shall be removed, discarded or destroyed before: (i) all requested records are completely released and (ii) all further judicial proceedings are complete. The University officials and faculty members involved are obligated to maintain all the records they created and used as part of the formal adjudicative proceedings and the bases of their decisions for further review, inspection and examination.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: WSU Board of Regents,
The Office of Governor,
The Secretary of the U.S. Department of Education

November 10, 2002

Dr. V. Lane Rawlins, President
422 French Adm. Bldg.
Washington State University,
Pullman, WA 99164-1046

Dear President Rawlins:

This letter serves as my written request before you in regard to the Provost's decision of November 6, 2002, responsive to my request of July 5, 2002. I believe the Provost's decision was not appropriate and justified because the decision was not supported by evidence and professional analysis as well as proper understanding of the issues brought before the University.

I believe the decision, "I will not reopen this final decision and review this matter yet again," was NOT relevant and necessary here. I do not see this decision has anything to do with my request before the University. In my request of July 5, 2002, I clearly indicated what I was asking the University to consider:

"I request the University immediately enforce the Interim Provost order of February 1, 2001, by ordering Dr. DePauw fully and completely released all the requested records. I also request the University order Dr. DePauw to provide written explanation and clarification in response to all my requests filed before her from April 19, 2000, to date."

"In such case that the University's official order of February 1, 2001, is not enforceable and/or the University is not able to honor the Interim Provost's decision, I request the University invalidate the Interim Provost's official letter of February 1, 2001, and void from any use for any official and legal reference and basis of agency actions."

"I request the University order Ms. Lori Lamb to provide answers, explanation, and clarification in response to my questions and concerns, especially as I indicated in my letters of December 5, 7, and 10, 2001, as well as February

21, March 8 and 11, 2002. This also includes all questions and concerns to which Dr. DePauw did not respond."

"In such case that the University's official order of December 13, 2001, is not enforceable and/or the University is not able to honor the Interim Provost's decision, I request the University invalidate the Interim Provost's official letter of December 13, 2001, and void from any use for any official and legal reference and basis of agency actions."

My requests as quoted above clearly indicate that I have requested the University to fully, completely and immediately release the requested records and provide written explanation, clarification responsive to all my requests.

I believe the statement, "You have fully exhausted your review of the University's decision to drop you from enrollment in the Interdisciplinary Doctoral Program," is also misleading and not relevant to the focal issues I brought before the University dated July 5, 2002. To date, I have not yet completed all internal appeal procedures at Washington State University. The Interim Provost's decision was the University's final decision in accordance with the Graduate Student Code, but this decision has not yet affirmed by the President and WSU Board of Regents.

None of my statements in the letters dated July 5, August 7, September 9 and September 10, 2002, indicated that I requested the Provost to review/reopen the Interim Provost's academic decision. In fact, I have NOT yet filed a petition before the Provost to review the Interim Provost's academic decision. I have repeatedly stated in my correspondences that "I reserve my right to pursue all avenues available in a timely manner upon a full, complete release of the requested documents for inspection and reviews."

To date, I have NOT yet received a full release of the requested education and public records to inspect and review the truthfulness, accuracy and integrity of the University's decisions. The University released my exam documents on

the portion that I passed, but not the portions that I failed. No record of academic review in the appeal process was provided. No explanation and clarification of the records was provided. Most released records were not at my requests and not relevant to the examination and the appeals. How could I prepare such a petition for an academic review while the relevant records are still withheld by the University? I believe this is NOT the way the University is authorized to perform its ethical and legal business. I am currently still in the process of obtaining all related documents in regard to the University's decisions to prepare for such a petition. It has been longer than two years. Where are the records showing the University's integrity, responsibility and accountability?

Can the President, the Provost or any doctorate on this campus prepare academic arguments and a petition for an academic review without reviewing all the examination records, academic criteria and judgment made by the University? I believe this is a common sense.

I am questioning the purpose of the Provost's decision in regard to what I did not yet ask for. The Provost's decision did not directly respond to my request of July 5, 2002. However, it is deemed that the Provost denied my request of July 5, 2002, and the procedure in this regard was exhausted at the Provost's office.

Therefore, I request you review the Provost's decision and review of November 6, 2002 and consider my request to enforce the Interim Provost's orders as indicated in my letters dated July 5 and August 7, 2002, in a timely manner. I also request you provide explicit explanation, rationale, evidence and analysis with your decision. In such case that this will take time longer than five working days, I request you notify me when I will receive your decision. All relevant correspondences were copied to you. If you require additional information in this regard, please feel free to contact me in writing.

With respect to your principles given in the Fall All-University Address on September 18, 2000, I had asked the

University officials to follow them as I indicated in my letters of November 6 and December 14, 2000:

"The stakes are high include what I believe to be the heart of the university; the right of the faculty to set the curriculum and decide the course of their research. Like all other rights, this carries with it a considerable responsibility, including a responsibility to justify the process to those who pay for it. Whether the questions are as mundane as the calculus requirement for business majors or as fundamental as why research in medieval literature is important, we must understand that our credibility is in question. We must not squander it by defending the indefensible or that which is only marginally important."

"Let us be up front about our concerns about the education process and try to apply research-based information to improve it. Let us take the position that questioning the importance of our research is legitimate and we are willing to engage in that dialogue. It is time for us to willingly and patiently explain what we do, how and why we do it, and how it is related to the economic, social, and cultural environment. But it is not time to give in to unreasonable arguments or surrender that which we believe is vital to our mission. "

"All the ideas, findings, processes and conclusions are subjected to rigorous questioning and validation and only the best survive. This is a place where notions about the sun orbiting the earth, the divinity of kings, the supremacy of money, and superiority of one race or religion over another are subject to open challenge. If such a place does not exist independent thought and effective action will be suppressed."

"As a public resource we have a responsibility to explain problems, develop solutions and be accountable for what we do."

Again, I urge you to apply these principles to my case. Although I believe this matter can be solved within your administrative authority, in such case that you fully affirm the Provost's decision and review of November 6,

2002, and the procedure in this regard is fully exhausted at the President's Office, I request you proceed on the following:

1. Service me your final decision as I brought before you above in a timely manner.

2. This letter also automatically serves as my petition before WSU Board of Regents to review your decision in this regard. It is my understanding that I have a right to access to the WSU Board of Regents through you as the Secretary of the Regents.

3. I request you facilitate all relevant documentation for WSU Board of Regents' consideration. All documentations are in custody of the University. However, if you have any question in this regard, please feel free to contact me.

4. I request you notify me all necessary procedures in this regard.

5. I have copied related letters to the WSU Board of Regents. Have the letters been circulated to the Regents in a timely manner? I request you provide me the date and meeting sessions they were in the hands of the Regents. If you have not done so, I request you immediately circulate them to the Regents and provide me your explanation why I have not had access to the Regents through you in a timely manner.

Finally, again, I request the University accurately inform me all other internal administrative reviews available as University's procedural safeguards against academic misjudgment in regard to the preliminary examination and the appeals under the adjudication of rights and responsibilities, the Graduate Student Code. This information also includes all other administrative relief available and time limits. I reserve my right to pursue all avenues available in a timely manner upon a full, complete release of the requested documents for inspection and reviews.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: WSU Board of Regents,
The Office of Governor,
The Secretary of the U.S. Department of Education

November 10, 2002

Dr. Robert C. Bates, Provost
The Office of the Provost,
422 French Adm.Bldg.,
PO Box 641046,
Washington State University,
Pullman, WA 99164-1046

Dear Dr. Bates:

I received your decision of November 6, 2002. Unfortunately, I believe you provided me with misleading information and instruction. I also believe that you have violated my constitutional due process rights. This letter serves as my written objection to your decision of November 6, 2002, responsive to my request of September 23, 2002.

First, I am objecting to your statement, "You have no additional rights to appeal this decision within Washington State University." I believe you have violated my constitutional due process rights in making such official statement prohibiting me access to due process at this University. I believe you also know and understand the following facts that:

1. "The Provost and Academic Vice President is directly responsible to the President and serves in the chief executive officer's stead as requested."

2. "The President administers the policies approved by the Board of Regents" and has other functions as indicated in the Faculty Manual.

3. "Any University committee or individual shall be accorded the opportunity to present a direct appeal to the Board of Regents through this channel."

4. I also believe: (i) The University's final decision made by the Provost is a matter subject to a review by the President upon a petition. (ii) The University's final decision made by the President is a matter subject to a review by the Board of Regents upon a petition. (iii) The University's final decision made by the Board of Regents is fully-completely legally constituted an agency's decision and action and that is subject to a judicial review upon a petition.

5. The Graduate Student Code grants a graduate student's right that "To be governed by clearly stated and justifiable academic procedures, rules, and regulations."

In such case that these above statements are not accurate, I request you immediately provide me all accurately published documents in this regard with your interpretation and rationale.

These evidences indicate that I **DO have** additional rights to appeal your decision of November 6, 2002, within Washington State University. I believe you do not have absolute authority at this University. Therefore, your decision and action is subject to an appeal before the President and the Board of Regents. I am questioning whether you have deceived my understanding of my rights and constitutional due process rights. I am questioning your motive in this regard.

In such case that you made an error in making such statement, I request you notify me a corrected statement and decision with full, explicit explanation how such statement

could be made by the University officer held a high experience and reputation.

Second, I am also objecting to your statement, "You may, within thirty days **of the date your receive this letter**, appeal this decision to the Whitman County Superior Court in accordance with RCW34.05.514 and 34.05.542." I believe you know and understand the facts that:

> 1. "A petition for judicial review of **agency action** ... within thirty days **after the agency action**, but **the time is extended** during any period ...or **that the agency action had a sufficient effect to confer standing upon the petitioner to obtain judicial review under this chapter.** "
> 2. The University's final decision of November 6, 2002, made by you is not yet fully-completely legally constituted an agency's final decision and action since the two additional appeals have not yet been completed.

Therefore, it is my understanding that I may, within thirty days **of the date I receive a service of the agency action**, not of the date I receive your letter of November 6, 2002, appeal the agency action and decision. I am questioning whether you have deceived my understanding of my rights and constitutional due process rights. I am questioning your motive in this regard.

In such case that you made an error in making such statement of notification, I request you notify me a corrected statement and decision with full, explicit explanation how such statement could be made by the University officer held a high experience and reputation.

Third, I am currently in the process of obtaining all relevant documentation from the University. The University has not yet fully released all my requested education and public records for my inspection and review, which is necessary to my preparation for judicial review. I believe the University action of withholding the requested records with no explanation has significant effect to impair my ability and

opportunity to obtain a fair judicial review. Therefore, this letter also serves as my written notification to the University that the time limit in accordance with RCW 34.05.542 and all University's internal due process is extended upon the last date the University release the last requested record and/or the date the matter of the record disclosure is finalized.

I have repeatedly stated in my correspondences that "I reserve my right to pursue all avenues available in a timely manner upon a full, complete release of the requested documents for inspection and reviews."

Fourth, with regard to your decision affirming the Committee's decision of April 5, 2002, it is my understanding that you claimed three findings to form your decision. Unfortunately, your findings were provided with no constructive evidence and professional analysis against the evidences and issues I brought in the letter of September 23, 2002. Thus, I believe your finding claims are vague and have no merit:

1). I believe the finding, "the Committee was properly constituted and that it had authority to hear and decide your case," is not supported by the factual evidences I presented in the letter of September 23, 2002:

(a). The SRC did not exist at the time I filed a request for the hearing. The University's functions regarding FERPA were delegated to the standing committee, "Registration and Records Committee." The University provided me with no evidence of its termination prior to the time my petition was filed.

(b). Mr. Richard Backes was not eligible to conduct a hearing in accordance with 34 CFR 99.

(c). The conduct of hearing did not meet the requirements for conducting a hearing in compliance with 34 CFR 99.

You simply ignored all these facts. What were your evidences and rationale against the facts I presented to you? I request you provide explicit evidence, rationale and

justification behind your conclusive finding. If you cannot, I believe your finding has no professional merit.

2). I believe the finding, "the hearing was conducted in accordance with the procedure authorized by WAC 504-04-010(4)," is misleading. I believe you know and understand that:

a). The WAC 504-04-010(4) authorizes the University to conduct a hearing pursuant to FERPA to be a brief adjudicative proceeding.

b). The conduct of the hearing in compliance with FERPA must meet all legal requirements of 34 CFR 99, WAC 504-21, RCW 34.05 and other applicable laws and regulations.

c). The authorization of the proceeding is necessary, but shall not be the only reason to justify the legitimacy of the outcomes of the hearing. It is a necessity condition, but not a sufficient condition. It does not warrant the conducts and decisions of the Committee are ethically and legally justified.

Although you find the Committee conducted the hearing in accordance with the procedure authorized by WAC 504-04-010(4), you provided no evidence and analysis to justify whether the Committee fully and properly conducted the hearing as a brief adjudicative proceeding in compliance with RCW 34.05, 34 CFR 99, WAC 504-21 as well as all other applicable laws and regulations.

Therefore, I believe your finding is not sufficient to warrant that the Committee's decision of April 5, 2002, is legitimate and justified.

3). I believe the finding, "your educational file is accurate and complete," is irrelevant. In the letter of September 23, 2002, I did not ask you to consider or examine the accuracy and completeness of my educational file. My written petition was brought before the University to review and invalidate the Student Records Committee (SRC)'s decision of April 5, 2002, that "the University has fully complied with your request for the release of education records under FERPA."

I do not see how the accuracy and completeness of my educational file can be used to justify the University's FERPA compliance. You also acknowledged in your letter that I did not dispute the accuracy or truthfulness of my education record. Nonetheless, you still claimed the accuracy and completeness of my educational file, which is not relevant, to support your conclusion and decision. I request you demonstrate your rationale and justification in this regard. If you cannot do so, I believe your finding has no professional merit to support your decision.

Fifth, your finding brought up the important issues: (i) what "educational file" you were referring to, (ii) what content of the file is accurate, and (iii) what content of the file is complete. I request you provide the index and volume of the educational file you had examined and found it is accurate and complete in a timely manner.

I believe you know and understand that I have not yet received a full release of the requested education records. So, you acknowledged the fact that I have not yet file a petition before the University in regard to the accuracy or truthfulness of my education record. How could I ask you to examine the accuracy or truthfulness of my education record? To date, I still have not yet seen the important records and its contents. The focal issues are: where they are and why the University has not fully release them. **Since you already affirmed that my educational file is accurate and complete, I request you immediately release all the requested education and public records withheld for inspection and review.**

Additionally, I request you release all other documentation and evidence that you created, obtained and used in your review and rendering your decision of November 6, 2002. I believe you know and understand that they are "public records" subject to the Public Disclosure Act.

With the above facts and rationale, I urge you to review your decision and the accuracy and truthfulness of your official statements. I also request you immediately, fully and completely release all the requested records above and responsive to all other public and education record requests as well as provide me clarification and explanation of your decision of November 6, 2002.

You are incomparably higher superior than me in all dimensions—authority, experience, and resources. Why did you direct me to challenge your authority and professional integrity in court? I am challenging you here, within the Washington State University's due process, to put all your constructive evidence and professional analysis upfront for inspection and review the truthfulness, integrity, completeness of your professional decision and action. If you cannot do it now, how could you do it in the witness stand?

This letter also serves as my written notification before you that any explanation, clarification, documentation/record in regard to your review and decision of November 6, 2002, released after I file an appeal before the President, the Board of Regents and/or applicable proceedings (where it is applicable) will be also considered/treated as the evidence of your intention, faith, and deliberately action to conceal, deceive and/or withhold the record/information to impair my opportunity to obtain a fair review in the appeal proceedings/judicial review. There is NO excuse for later discovery as to your confirmation that my educational file is accurate and complete as of November 6, 2002, as well as to your professional responsibility. It is also the responsibility of University's officials to maintain both original and copied versions of all records of my cases at WSU from my initial enrollment in the secured place for inspection, review and verification. I request you immediately reaffirm their responsibility in this regard if you have not done so.

If I do not receive a written response from you at the end of five business days, it is deemed that:

(i) You affirm your decision and all statements in the letters of November 6, 2002, with full consciousness, intention and understanding of its contents and consequences as to reflect, imply and/or represent the Provost's and the University's faiths in conducting its decisions and actions.

(ii) You deny my request with NO explanation and clarification and have NO willingness to demonstrate the Provost's and the University's good faiths in regard to the matters.

(iii) The denial is final and constitutes **a procedural exhaustion at the Provost's office** in this regard.

Finally, again, I would also like to notify the University that NO record, either whole or parts of the requested records, shall be removed, discarded or destroyed before: (i) all requested records are completely released and (ii) all further judicial proceedings are complete. The University officials and faculty members involved are obligated to maintain all the records they created and used as part of the adjudicative proceedings and the bases of their decisions for further review, inspection and examination.

If you have any question, please feel free to contact me in writing.

Sincerely,
s/Benjapon Sakkarapope
Benjapon Sakkarapope
cc: The President,
The WSU Board of Regents,
The Office of Washington State Governor,
The Secretary of U.S. Department of Education.

430 NE Oak #2
Pullman, WA 99163
Phone/Fax: 509-332-8911
Email: bsakkara@wsunix.wsu.edu

January 13, 2003

President Joe King
WSU Board of Regents
422 French Administration Building
Washington State University,
Pullman, WA 99164-1048

Dear President King:

This letter serves as my written appeal before the President of WSU Board of Regents for my education records and public records, and the University's official decisions and actions in regard to my requests for the records.

Due to the no-response pattern by the WSU President, my appeal before you is the last avenue. In such case that the WSU President does not honor my request to submit the matter to agenda items to the Board on January 24, 2003, on my behalf and provides no constructive solution to the matters and issues I brought before the University prior to the January 24, 2003, meeting, I request you consider my request on the following:

1. Call for a special meeting to consider the matter in regard to my education records and public records, and the University's official decisions and actions in regard to my requests for the records. The matter is far more complicated than one can summarize the issues to fit in one page for the Board to consider, due to the conducts of the University's officials since 1999. The purpose of the special meeting shall include, but not limit to, the following:
    a. Reconsider all my requests before the University's officials and review all the

University's decisions and actions in regard to my case. The meeting shall assure the information of what University's records were created, obtained, used and maintained by the University's officials in the preliminary examinations and the appeals, and what records were removed, discarded and/or destroyed while my requests for the records are outstanding, is accurate and complete.

b. Assure that Washington State University fully and completely release my education records and public records responsive to all my requests.
c. Demonstrate the integrity and truthfulness of the University's official decisions and actions with respect to the student's right and the constitutional due process right as well as the University's ethical, academic, and professional standard of practices.
d. Consider a full refund and compensation as I indicated in my letter dated December 14, 2000, on page 9.

2. Refer my appeal to a proper regent committee to consider the matters I indicated in 1 above and in all my appeals before the WSU President in the committee meeting on January 24, 2003, and take appropriate actions and decisions. My appeals before the WSU President were already copied to the Board through the Secretary. I also request you and the committee authorize my appearance before the regent committee on January 24, 2003.
3. Suspend the requirements for submittal of agenda items and bring the matter to the regular meeting agenda on January 24, 2003, on my behalf. This is because the seriousness and urgency of the matter. I believe the University's officials withhold my Spring 2003 enrollment registration based on inappropriate and misrepresentation information, and the University's officials denied to make proper correction.

4. I am an international student that I have obligation to maintain my regular enrollment at WSU to fulfill my immigration status. I request you assure that I have appropriate immigration status during the appeal process as the University's promise on August 10, 2000.
5. In such case that the Washington State University is not able to fully and completely release my education records and demonstrate the integrity and truthfulness of the University's official decisions and actions with respect to the student's right and the constitutional due process right as well as the University's ethical, academic, and professional standard of practices, I request the WSU Board of Regents to consider a full refund and compensation as I indicated in my letter dated December 14, 2000, on page 9.
6. I request you and the Chair of Academic, Faculty, and Student Affairs Committee, afford an opportunity to have a private conference with me in regard to the matters at anytime before or after the regular meeting of January 24, 2003. Please notify me the arrangement. I will attend the meeting dated January 24, 2003.
7. I request you authorize my attendance and appearance at the meeting dated January 24, 2003, and provide instruction for me to follow to avoid any interfere and disturbance to the government function. This will assure that my appearance and attendance will be appropriate and in order.

Prior to this request before you, I have tried to pursue all avenues in accordance with WAC 504-21, FERPA, 34 CFR 99, and the Public Disclosure Act. I had followed the established procedures and the procedures the University officials notified me at my best knowledge and understanding. It was beyond two years and anyone can imagine. To date, I received the records of the examination on the portions I received a passing grade, but not the other portions I received failing grades (please see the attachment for more details). I still have not yet fully and completely

received the requested records (please see the attachment for details of the requested records) as well as explanation and clarification of the University's official actions and decisions, and the records.

I have filed several appeals before the WSU President with subsequent follow-up requests since September 10, 2002 (please see the attachment for a brief summary of what steps I have taken to solve the problem prior to WSU Board of Regents). These appeals include my letters to the WSU President dated September 10, November 4, 9, and 10, and December 7, 2002, as well as January 4, 2003. I believe the WSU President was allowed sufficient time to take appropriate actions and decisions. However, the WSU President did not acknowledge a receipt of my requests and provided no explanation and clarification responsive to my requests.

Furthermore, the University's official, Dr. Howard Grimes, did not only respond to my request for the requested records made directly before him as the Provost's affirmation of the University's official statements, and attempt to solve the matter, but also issued a series of misrepresentation memoranda dated November 25 and December 18, 2002, as well as withholding my enrollment registration for Spring 2003 semester with a misrepresentation claim of academic deficiency. With all evidences of the University's actions responsive to my requests, I strongly believe that the University's officials did not demonstrate their good faith in compliance with the University's ethical and legal standard of practices as well as state and federal laws. I believe the University officials have violated the student's rights to inspect and review his education records made by the University's officials behind the closed doors as well as the constitutional due process right of the United States.

I have persistently pursued the University's internal procedures up to the President's office and it was deemed that the procedure was exhausted at the WSU President's office. As a WSU student, the WSU Board of Regents is my

last resource within Washington State University to seek justice and maintain my student's rights and constitutional due process rights.

I have filed a request and communicated to the Board of Regents through the WSU President dated November 9 and 10, December 7, 2002, as well as January 14, 2003, to bring the matter to the attention of the WSU Board of Regents and consider appropriate actions and decisions. I also have copied correspondence letters with the University's officials to the Board and call for the Board's attention of the conducts of the University's officials that I believe they were not appropriate. The WSU President provided no information how the University has handled my communication to the Board. Therefore, I assume the Board has sufficient knowledge of the matters. Article II Section J.

With the brief situation and condition above, I believe my appeal before you is the last resource and necessary to solve the matters ignored by the University's officials.

The failing result of the examination and the University's decisions and actions in the appeal processes have significantly jeopardized my personal reputation, normal family life, and professional career as well as my mental, physical health and well-being during past years and the future. I strongly believe that the failing result of the examination does not represent my academic performance at Washington State University and that the conducts of the University's officials were not academically, ethically, and legally justified. I have substantially suffered from the University's decisions and actions. The requested records are significantly crucial to verify the accuracy, truthfulness, and integrity of the University's actions and decisions. Without the records of the conducts behind the closed doors and explicit rationales and evidences the University's officials used as the bases of their actions and decisions, there is no other mean to verify the accuracy, truthfulness and integrity of the University's actions and decisions.

If you require further information in this regard, please feel free to contact me. Thank you very much for your consideration.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

Urgent

January 21, 2003

WSU Board of Regents
422 French Adm. Bldg.
Washington State University,
Pullman, WA 99164-1048

Dear WSU Board of Regents:

Enclosed is the timeline of my communications to WSU President, Provost, and WSU Board of Regents in regard to education/public records requests and appeals.

This letter serves as my written notification to the WSU Board of Regents on the following:

1. In compliance with the Article II, Section 10/J, to date, I expect this obligation has been **fully and completely** fulfilled. Each regent shall have a full, complete documentation of my communications to the Board since May 2, 2002, with respect to the enclosed timeline of my communications. I urge each Regent verify the completeness of my communications to the Board accordingly prior to the regular meeting dated January 24, 2003, officially begins.

In such case that my communications have NOT **fully and completely** been reached each Regent on January 21, 2003, I urge each Regent immediately request the WSU President and the Secretary of the WSU Board of Regents immediately delivery any documentation of my

communications to the Board withheld by any official to each Regent prior to the Academic, Faculty, and Student Affairs Committee's meeting begins.

2. Once the regular meeting dated January 24, 2003, officially begins, it is officially, legally and completely constituted that the WSU President, the Provost, and/or other University officials are fully and completely acknowledged, read, and understood the contents of all my communication documentations and have NO objection and further question in the accuracy and truthfulness of its contents.

After the meeting officially begins the University officials shall assume all responsibilities for all consequences of his/her statements that misleads and misrepresents the contents of my written communications made in their decisions and actions as well as correspondences. No University official shall claim any misunderstanding and/or misinterpreting of my statements to excuse him/herself from any official responsibility.

3. Per my correspondences, I already notified the University President and the Board of my attendance at the meeting dated January 24, 2003. This letter also serves as my written confirmation of my attendance at the meeting dated January 24, 2003. Please facilitate and accommodate my attendance as necessary at the meeting. No one shall permit to block my attendance at the public meeting.

4. I request all legal and official communications from President King or the Board to me shall be issued directly from and signed by the President of the Board regardless of what matter is. Since the WSU President's decision and action is a subject of the appealing matter, the University President shall excuse himself from taking any official action and decision on behalf of President King and WSU Board of Regents.

The Provost's letter dated January 15, 2003, also misrepresents the matters moved beyond the Provost's office. AGAIN, to date, I have **NOT** yet filed any **academic appeal** before the Provost, the WSU President and the President of the Board. I am still in the process of obtaining my education and public records.

5. This letter also serves as my written objection to the Provost's letter dated January 15, 2003, denying my access to the Board. I have a right to have my voice heard by the WSU Board of Regents in regard to the University businesses. Therefore, this letter serves as my written notification to the Board that my constitutional due process right and freedom of expression in addressing the matters before the WSU Board of Regents have been blocked by the University officials.

Since the WSU President has ignored the matters brought before him, and the matters were deemed denials with no explanation and clarification as indicated in my correspondences, the President shall facilitate and support my opportunity to address the matters before the Board.

6. At this stage, the matters were officially and legally moved beyond the University President to the Office of the Board of Regents. The appealing matters have been officially and legally in the proceeding within the WSU Board of Regents' authority at the Office of the Board of Regents.

It will be also officially and legally constituted that the WSU Board of Regents has full knowledge and accurate understanding of the contents of all my communications to the University and the Board at the end of the conclusion of the regular meeting dated January 24, 2003. Any action and decision after the last minute of the conclusion is legally and officially constituted an agency action and decision in regard to the appealing matters as well as implies, represents and/or reflect Washington State University, state agency's faiths and official and legal conducts of its decisions and actions.

In such case that no further request for clarification of any statements of my communications is made at the end of the regular meeting dated January 24, 2003, it is legally and officially constituted that the WSU Board of Regents acknowledges and accepts all statements in my communications truthful and accurate with no objection as well as agree that all my statements and the University's officials' statements of their decisions and actions are legally and officially valid to ground for further action at my discretion. The Board also unconditionally endorsed all decisions and actions made by the University's officials as to fully reflect, imply and/or represent the agency's actions and decisions. Thus, Washington State University shall unconditionally assume all responsibilities for all consequences of the University's actions and decision that were NOT made in compliance with all applicable laws, regulations, established procedures and policies.

I will be attending the meeting and have a full willingness to standby for entertaining any question from the Board and/or each Regents at any time before, after and/or while the meeting is in session, as well as in private and/or in public. After the minute I left the meeting, it will be officially, legally and fully constituted that the Board satisfies with the clarity, accuracy and truthfulness of the contents of all my communications to the Board and the University as well as no objection and correction.

Finally, this letter is also faxed to the Office of the WSU President. The original letter will be sent with a certified mail. This will assure that the matter will be timely reached the WSU Board of Regents. If you have any question in regard to my request, please contact me in writing.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: The WSU President

NE 430 Oak #2,
Pullman, WA 99163
Phone/Fax: 509-332-8911

January 24, 2003

WSU Board of Regents
422 French Adm. Bldg.
Washington State University,
Pullman, WA 99164-1048

Dear Regents:

Enclosed is my tentative written address to the WSU Board of Regents at the regular meeting dated January 24, 2003.

I strongly believe the University's denial access to my opportunity to address before the Board and submit my appeals on the item agenda, has violated my constitutional due process right and my right to freedom of expression to have my voice heard by the WSU Board of Regents.

At the end of the regular meeting dated January 24, 2003, unless I am given an opportunity to address to the Board of Regents at the meeting or the matters are pending a request for reconsideration by the WSU President, this letter serves as my written protest against the denial, officially and legally filed with Washington State University Board of Regents at the meeting dated January 24, 2003. I request the Board properly maintains my written protest for further reference.

I reserve my right to revise and/or modify the address at and after the public meeting as part of my written protest disclosing to statewide media and the public.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

430 NE Oak #2
Pullman, WA 99163

May 8, 2003

WSU Board of Regents
422 French Administration Building
Washington State University,
Pullman, WA 99164-1048

Dear WSU Board of Regents:

I received Assistant Attorney General Steve Vinsonhaler' s letter dated May 6, 2003, denial access to Health and Wellness Services.

This letter serves as my petition before the Board of Regents to reconsider the denial access to Health and Wellness Services. As I indicated in my appeal before the WSU President dated April 4, 2003, I request the Board consider my petition in a timely manner.

This letter also serves as my written follow-up of my application for an adjudicative proceeding in compliance with the Administrative Procedure Act, filed with the Board on February 23, 2003. To date, it has passed 60 days. I have not received any inquiry for additional information. Nor a notification of the status of my application was provided. The matters have not been solved.

Again, as indicated in my follow up of March 9 and April 9, 2003, the application for a formal adjudicative proceeding is not disposable. Since the Board did not ask for additional information, to show its good faith in this regard, the University shall not hold the application for 90 days.

Each member of the WSU Board of Regents was appointed by the Governor with approval of the Senate. Before entering upon his duties, each Regent took and subscribed an oath to discharge faithfully and honestly his duties and to perform strictly and impartially the same to the best of his ability. RCW 28B.10.520.

Therefore, I request the Board of Regents demonstrates its good faith in regard to the matters by assuring the chief of administrative law judge assigns an administrative law judge preside over the proceedings in a timely manner.

Finally, this letter serves as my written objection to Mr. Steve Vinsonhaler's statements that "you have no pending appeals or adjudicative proceedings before WSU or its Board of Regents. You have disenrolled Spring semester 2003, and were notified (on numerous occasions) that you have no further recourse within WSU." These statements are misleading and not consistent with the facts:

1. On February 6, 2003, I filed a request before Dr. Howard Grimes, the Graduate School, to consider the disenrollment decision and his conducts. These matters were subsequently brought before WSU Board of Regents effective on February 24, 2003. To date, I have not yet received any response from the Board.
2. On February 23, 2003, an application for a formal adjudicative proceeding in compliance with the Administrative Procedure Act was filed. The University have obligation to comply with the APA within 90 days. To date, it is still within the period of 90 days.
3. My petition before the Governor to enforce the oaths WSU Board of Regents filed with the secretary of state has been underway to the Governor's office.

In addition, in response to my request of May 2, 2002, Mr. Steve Vinsonhaler has not yet provided any explanation and clarification of his involvement with the conduct of the hearing of March 27, 2002.

For further information in this regard, please feel free to contact me. Thank you very much.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope
cc: WSU President,
Chief of Administrative Law Judge,
Governor Gary Locke,
Steve Vinsonhaler
Attorney General Christine O. Gregoire

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430 NE Oak #2
Pullman, WA 99163

June 12, 2003

WSU Board of Regents
422 French Administration Building
Washington State University,
Pullman, WA 99164-1048

Dear WSU Board of Regents:

This letter serves as my written follow-up of my petition before the WSU Board of Regents dated May 8, 2003. To date, I received no response from the Board. The University's denial has significant impact on the student's welfare, life and liberty. I request the Board notify me the status of my petition in a timely manner.

This letter also serves as my written objection to Ms. Mary Furnari's letter dated May 23, 2003. Particularly, the statement that "you are no longer a student at Washington State University," was clearly misled. I believe the contents of her letter were misleading and did not accurately reflect my current, legal student status at Washington State University. I have also repeatedly informed the University that I have full intention to complete my courses of study at Washington State University. While my department chair

and academic advisors did not make any recommendation to drop me from the program and my academic performance is outstanding, my enrollment was terminated by Dr. Howard Grimes to serve his personal interests; it has been pending the outcomes of subsequent petitions and further judicial reviews.

I am also objecting to the statement that "It is your best interest to return home to Thailand you can pursue a career and future with promise. It is our sincere hope that you will make the right decision and return home to find success at in Thailand." This advice is NOT my best interest, but I believe the advice and hope are the best interests of the University's officials who abused their authorities and professional conducts. It is my best interest to find success at Washington State University, the land of promise. It is my best interest to exercise my student and constitutional rights and seek justice in the United States of America, the land of civilization and freedom. This is my best, great opportunity in my life time to experience of what American justice and values really are. I strongly believe the conducts of Dr. Howard Grimes and other University's officials do not represent the genuine American value and justice. I believe the genuine American justice and values are the foundation of my future career success.

My petitions are legitimate, active and outstanding within the constitutions of the State of Washington and the United States of America. My student statuses in both doctoral and master programs at Washington State University have been pending outcomes of my petitions and further judicial reviews. The Board of Regents, the Offices of International Programs and the Graduate School, as well as other University's offices have full knowledge of the ongoing petitions. The continuously ignoring to my petitions is the intended choice of the University.

Therefore, this letter serves as my written petition before the Board of Regents to assure that the University maintain proper documentation of my student status during

administrative and judicial proceedings, and notify the BCIS with accurate, full and complete information in this regard. I request the University be responsible for the consequences of the misleading information of my student status.

To date, it is also beyond the 90 days since my application for an adjudicative proceeding in compliance with the Administrative Procedure Act was filed before the University on February 23, 2003. I received no notification of assignment of an administrative law judge. With subsequent follow-ups, it has been understood that the Board of Regents, each Regents, and the University have full knowledge and understanding of the constitutional and student rights of petitions. The actions and decisions of continuously ignoring responsive to the petitions were intentionally made with full recognition of the impact of the decisions and actions on the student's life and liberty.

Thus, this letter also serves as my written petition for reconsideration of the decisions and actions ignored by the Board of Regents, Washington State University, in regard to all my petitions, including the application for an adjudicative proceeding in compliance with the Administrative Procedure Act.

Each member of the WSU Board of Regents was appointed by the Governor with approval of the Senate. Before entering upon his duties, each Regent took and subscribed an oath to discharge faithfully and honestly his duties and to perform strictly and impartially the same to the best of his ability. RCW 28B.10.520.

The constitution of the State of Washington, Article I Section 3 states "No person shall be deprived of life, liberty, or property, without due process of law." Also, the Article I Section 4 indicates "The right of petition and of the people peaceably to assemble for the common good shall never be abridged."

I believe I have been deprived of life, opportunities, and liberty due to the failure of the WSU Regents to discharge their duties and to perform strictly and impartially

the same to the best of their abilities in compliance with the oaths filed with the secretary of state. RCW 28B.10.520. I believe the University have not sufficiently afforded me due process of law and honored the right of petitions.

In addition, this letter is to reaffirm the University that all my petitions have been exercised under provisions of student and constitutional rights.

Therefore, I request the Board of Regents demonstrates its good faith to consider my petitions with proper proceedings in compliance with the student and constitutional rights. I also request the Board of Regents, Washington State University fully honor my rights of petitions with due process of law and notify me its decision and status of all my petitions in a timely manner.

For further information in this regard, please feel free to contact me. Thank you very much.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

June 18, 2003

Governor Gary Locke
Office of the Governor
P.O. Box 40002
Olympia, WA 98504-0002

Dear Governor Locke:

This letter serves as my written follow-up of my petition before you dated May 7, 2003, to enforce the oaths WSU Regents filed with the secretary of state, and seek equal access to justice of the State of Washington. To date, it has passed 30 days. I have not yet received any notification of what proceeding you have taken in regard to my petition.

The Article I Section 3 of the constitution of the State of Washington states that "No person shall be deprived of life, liberty, or property, without due process of law." The Article I Section 4 indicates that "The right of petition and of the people peaceably to assemble for the common good shall never be abridged."

My petition before the Governor was filed in exercising my constitutional rights. I had pursued all internal proceedings within the University. An application for a formal adjudicative proceeding in compliance with the Administrative Procedure Act (APA) was also filed and it has passed 90 days. An administrative law judge has not yet been assigned. No response from the University. No solution and explanation was provided, but the decisions and actions of continuously ignoring the constitutional rights of the petitioner. I believe Dr. Howard Grimes' conducts of making misrepresentation statements and abusing his discretion, are not justified under the state constitution and the University's policies and professional conduct. Nonetheless President Joe King denied access to the Board while the matters were ignored by WSU President, and exhausted at University's administrative level.

I believe the violation of the constitutional and student rights has deprived of my life, opportunities, and liberty due to the failure of the WSU Regents to discharge their duties and to perform strictly and impartially the same to the best of their abilities in compliance with the oaths filed with the secretary of state. RCW 28B.10.520. I believe the University has not sufficiently afforded due process of law in regard to my case. I believe the University's decisions and actions were arbitrarily made and deviatory from accepted academic and professional norms. The University's officials did not actually exercise their professional judgments. Also, the University failed to provide a procedural safeguard against academic misjudgment.

Because the Governor was elected by the people of State of Washington to oversight all state agencies, the

Governor is the last resource within the state administrative proceeding. Washington State University is a state higher education institution and the members of its Board of Regents were appointed by the Governor with the advice and consent of the Senate. My petition before the Governor, therefore, is legitimate.

In such case that you still have not yet read and reviewed my petition before you, this is not simply an isolated case/incidence. This is not only a case of the University's violation of the rights, but also a case of principles and integrity of the state agency. The privilege of academic profession shall be exercised with genuine expertise, fairness and accountability. Since the State of Washington is not governing by dictatorship principle, all conducts and decisions made by the state officials shall be made according to the rules of laws and open to the public and the parities involved. The state officials shall not destroy the documentation while my petitions are outstanding, and withhold the documentation being requested under the provisions of public and education records

How many students were victimized by such misconducts at Washington State University? How many more? When this kind of abusive privilege and authorities is going to stop? By not taking any action, I believe it simply gives a wrong, misleading signal to those officials that they have absolute authorities above the laws of the land, and this creates a new benchmark of lowering the standard professional conducts of the state officials. The student tuitions and state funds shall not be misused to promote such conduct and action deviatory from accepted academic and professional norms. I have been around and long enough on this campus and seen enough of such misconducts and mistreatments. I believe it is the time that the truth under God shall be disclosed freely and the State shall take action for the wisdom of the people of the State of Washington.

To date, the issues I brought before the University remain unsolved. The Board of Regents has also

intentionally ignored my petitions and the University has repeatedly violated my constitutional and student rights. A student has a right to education and to be treated fairly, openly in both academic and non-academic matters.

Therefore, **I urge the Governor, the head of all state agencies, that my petitions are not abridged. My constitutional rights and student's rights shall be honored in a timely fashion.** I also urge the Governor notify me of what proceedings have been taken in regard to my petition.

In such case that the Board of Regents is not able to discharge their duties and to perform strictly and impartially the same to the best of their abilities in compliance with the oaths filed with the secretary of state, RCW 28B.10.520, **this letter also serves as my petition before the Governor to exercise your discretion to invalidate all University's decisions and actions in regard to my case made from January 2000 to date.** These decisions and actions were made in violations of the constitutional and student rights. I also request the Governor enforces all existing laws and policies under the constitution of the State of Washington in this matter.

Finally, I would like to have an opportunity to meet and discuss the matter with the Governor. I am asking the Governor to afford me an opportunity in this regard. Please notify me the date and place of an appointment.

If you require additional information, please feel free to contact me. Thank you for you consideration.

Sincerely,
s/ B. Sakkarapope
Benjapon Sakkarapope

FILED
JUL 23 2003
SHIRLEY BAFUS
WHITMAN COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF WHITMAN

BENJAPON SAKKARAPOPE,)	
)	
Petitioner)	Case No. 03-2-00168-4
v.)	
)	PETITION FOR REVIEW
STATE OF WASHINTON,)	
THE BOARD OF REGENTS,)	FILING FEE: $110.00
WASHINGON STATE)	(RCW 36.18.020(2)(c))
UNIVERSITY)	
)	
Respondent.)	
)	

1. The Petitioner, Mr. Benjapon Sakkarapope, whose mailing address is 430 NE Oak Street, Apartment 2, petitions for review pursuant to RCW 34.05.510 et. seq., and RCW 42.17.340, of administrative agency decisions and actions.

2. The decisions and actions are from Washington State University (WSU). Their address is: The Office of the Board of Regents, French Administration Building, Room 422, Stadium Way, P.O. Box 641048, Pullman, WA 99164-1048.

3. At issues are the decisions and actions of the Board of Regents, Washington State University, as briefly listed in Attachment I and related decisions and actions, in regard to the Petitioner on the following:

A. The agency's denials of public records disclosure are listed in Attachment III. The reviews of agency's denials

of public records pursuant to RCW 42.17.325, are listed in Attachment IV.

B. The decisions and actions of the brief adjudicative proceeding of March 27, 2002, pursuant to WAC 504-21-040, WAC 504-04-010, RCW 34.05.482 through 34.05.491, (Attachment II). The decision of April 5, 2002, was made by the Student's Record Committee, chaired by Mr. Richard Backes; and the decision of November 6, 2002, made by Provost Robert Bates.

After unsuccessful of obtaining explanation and clarification of the decision of April 5, 2002, the Petitioner appealed the decision before the Provost on September 23, 2002; the appeal was denied on November 6, 2002. The President and the Board of Regents were deemed to have denied the subsequent appeals before them.

C. The decisions and actions of denial an application for adjudicative proceeding dated February 23, 2003, and of denial access to the Board on January 24, 2003, made by the University--WSU Board of Regents, President Joe King, and the University President (see Attachment I).

D. The decisions and actions in regard to the preliminary examination ended on February 11, 2000, in fulfilling the requirement of the IIDP, made by Dr. Kenneth Duft and the examination/advisory committee (see Attachment I). The decisions and actions include the decisions of the evaluation of the written preliminary examinations dated January 12 and 14, and the oral examination dated February 11, 2000. Both written and oral examinations constitute one preliminary examination.

E. The decisions and actions under the adjudication of the Graduate Student Code, made by Dr. Howard Grimes and the CGSRR (September 1, 2000), Drs. Karen DePauw, Herbert Hill, Ronald Hopkins, and Robert Bates (see Attachment I).

F. The decisions and actions made by Dr. Howard Grimes since November 2002. The Petitioner had filed

several appeals from December, 2002, to February 6, 2003. Dr. Howard Grimes provided no response.

After unsuccessful of solving the matter with Dr. Grimes, the subsequent appeals before the Provost, WSU President and the Board of Regents were filed; the University provided no response. The appeals were deemed to have been denied (Attachment I).

4. The parties in the decisions were Petitioner herein and the Board of Regents, Washington State University, by:

(a) Individual Regents

(b) WSU President (Dr. V. Lane Rawlins)

(c) Provost (Dr. Robert Bates) and Interim Provost (Dr. Ronald Hopkins)

(d) Drs. Karen DePauw (former Dean, the Graduate School) and Herbert Hills (former Associate Dean, the Graduate School)

(e) The Committee on Graduate Student Rights and Responsibilities (CGSRR)—Drs. Howard Grimes (Dean, the Graduate School), Sally Blank, and James Harsh.

(f) The Student Records Committee (SRC)—Mr. Richard Backes, Mr. Barry Johnston, Dr. William Cofer, and Ms. Helen Tupai.

(g) The advisory/preliminary examination committee—Drs. Kenneth Duft, Phillip Wandschneider, Hong Holly Wang, Frederick Inaba, Li-Ming Han (John Kling), and Hao Zhang. The Graduate School Representative: Dr. R. Allan Black.

(h) Public Records Officers: Mss. Lori Lamb and Kirsten Pauli

5. The Petitioner is entitled to obtain judicial reviews because of the following facts:

A. Under RCW 42.17.250 through 42.17.320, the Petitioner had made requests for agency's records of the preliminary examination of February 11, 2000, the appeals of the examination under the Graduate Student Code, the brief adjudicative proceeding, and related documents since May 23, 2002:

(1) The list of the requests for records is shown in Attachment III. Attachment III also briefly states facts of the agency's actions and the actions the Petitioner had taken. See also, Attachment VI for correspondences.

(2) Attachment X demonstrates the lists of records released by the agency, but only small portion of them are the requested records.

(3) Attachment IX briefly summarizes the scope of the requested records, the requested records actually received, and the records to which the agency still has not provided full disclosure in compliance with the Public Records Act.

(4) Based on the facts in the best knowledge of the Petitioner could possibly have, and the facts of how the agency released the records over previous years, the petitioner strongly believes the agency has intentionally denied an opportunity to inspect and copy public records. Attachment IX significantly demonstrates that the released records were incomplete. The agency has taken time to disclosing the requested records over two years.

(5) The agency has not sufficiently, explicitly informed the Petitioner of reasonable circumstances, and the status of the requested records. Where the agency indicated a record did not exist, the record was still released afterward. The Petitioner has a reasonable doubt in the agency's professional creditability in this regard.

(6) The agency indicated exemption claims in the item #4 of the request dated May 23, 2002, and the item #17 of the request dated May 31, 2002. The denials were reviewed by the Attorney General pursuant to RCW 42.17.325. The reviews were issued on October 8, 2002, and February 3, 2003. See Attachment IV and VIII.

(7) Where the review of October 8, 2002, made by Senior Counsel Meredith Wright Morton, indicated that "no public record exist," Senior Assistant Attorney General Antoinette M. Ursich did provide the list of the records withheld under the exemption claims on September 30, 2002.

The agency entered an exemption claim to withhold the records; this was the reason for the request for review. Ms. Pauli informed the Petitioner that all documents were sent off to the Office of Attorney General for review. The review of February 3, 2003, made by AGG Nancy J. Krier, still did not clearly provide reasonable evidences and circumstances and facts to justifying the denials with respect to the issues raised by the Petitioner. Therefore, the Petitioner has a reasonable doubt in those reviews.

B. The decision of April 5, 2002, was from the brief adjudicative proceeding:

(1) The Student Records Committee (SRC) did not exist at the time the Petitioner filed a request for the hearing. The University's functions regarding FERPA were delegated to the standing committee, "Registration and Records Committee." The University provided the Petitioner with no evidence of its termination prior to the time the petition was filed.

(2) Mr. Richard Backes had an interest in the outcome of the hearing; he was not eligible to conduct a hearing in accordance with 34 CFR 99. See also Dr. DePauw's email dated 3/5/02 to Ms. Linda Infranco, and Mr. Backes' email dated March 20, 2002, to Dr. DePauw.

(3) The conduct of hearing did not meet the requirements for conducting a hearing in compliance with 34 CFR 99. See the letter dated September 23, 2002.

(4) The Petitioner's right to have an advocate or attorney to represent him at the hearing was denied.

(5) The SRC never informed the Petitioner of what procedures they had pursued and what evidences they have obtained in their deliberation and rendering the decision of April 5, 2002. None of documentation under their proceedings disclosed, provided constructive facts supporting the decision.

(6) The Student Records Committee (SRC)'s decision of April 5, 2002, "the University has fully complied with your request for the release of education records under

FERPA," was not support by the facts. After April 5, 2002, the agency still released some additional requested records and of which the SRC indicated it did not exist.

(7) The agency's decision of November 6, 2002, made by Provost Robert Bates, "You have no additional rights to appeal this decision within Washington State University," was not supported by the facts:

(a) "The Provost and Academic Vice President is directly responsible to the President and serves in the chief executive officer's stead as requested."

(b) "The President administers the policies approved by the Board of Regents" and has other functions as indicated in the Faculty Manual.

(c) "Any University committee or individual shall be accorded the opportunity to present a direct appeal to the Board of Regents through this channel."

(d) The Graduate Student Code grants a graduate student's right that "To be governed by clearly stated and justifiable academic procedures, rules, and regulations."

(8) The agency's decision of November 6, 2002, made by Provost Robert Bates, "You may, within thirty days of the date your receive this letter, appeal this decision to the Whitman County Superior Court in accordance with RCW34.05.514 and 34.05.542, " was misleading and inaccurate.

C. The application for adjudicative proceeding dated February 23, 2003, was deemed to have been denied. The agency provided no response within the 90 days. The denial access to the Board on January 24, 2003, was verbally made by the University--WSU Board of Regents, President Joe King, and the University President, in consultation with the Office of Attorney General while the Petitioner presented at the meeting with full intention and interest to address the matters before the Board.

D. The decisions and actions in regard to the preliminary examination ended on February 11, 2000, in

fulfilling the requirement of the IIDP, made by Dr. Kenneth Duft and the examination/advisory committee (see Attachment I):

(1) The decisions and actions include the decisions of the evaluation of the written preliminary examinations dated January 12 and 14, and the oral examination dated February 11, 2000. Both written and oral examinations constituted one preliminary examination where it is different from the other doctoral program requirement.

(2) Dr. Kenneth Duft and the examination/advisory committee failed to properly comply with the established procedures in the IIDP Faculty/Student Handbook, and with respect to the student's program of study approved by the Graduate Studies Committee, as well as the right of the student.

(3) Dr. Duft and the committee predisposed the preliminary examination prior the preliminary examination procedure was completed. After discovering that the committee was not able to do so with respect to the requirement of the IIDP, the oral examination was simply scheduled to fulfill its official obligation and prejudgment.

(4) Dr. Duft not only refused to reconvene a committee's meeting to consider the Petitioner's request dated January 31, 2000, for solving the discrepancies in the written examination process prior to the scheduling for the oral examination, but also advised the Petitioner to challenge the decision before the Graduate School. The oral examination was conducted without a proper solution to the discrepancies of the written examination portions.

(5) Dr. Kenneth Duft provided misleading and representation information responsive to Dr. Herbert Hill email dated 5/5/00, as indicated in the Petitioner's correspondences.

(6) Dr. Duft and individual committee members excused themselves from discussing the results of the examinations with the student, and withheld the student's education and public records in regard to the examination.

E. The decisions and actions under the adjudication of the Graduate Student Code, made by Dr. Howard Grimes and the CGSRR (September 1, 2000), Drs. Karen DePauw, Herbert Hill, Ronald Hopkins, and Robert Bates:

(1) President King reaffirmed that the University's academic decisions cannot be changed regardless of what records would come out. This included the academic decisions made by Dr. Howard Grimes, the CGSRR, Dr. Karen DePauw and Dr. Herbert Hill without academic expertise in the academic areas underlying the academic disciplines of the student's program of study approved by the University.

(2) Dr. Karen DePauw as the Program chair excused herself from reviewing the examination and advised the student to pursue the Graduate School's appeal process in order to be fair for everyone involved.

(3) Dr. Herbert Hill, Associate Dean, made an academic review of the examination and rendered the Graduate School's decisions of May 19 and June 9, 2000, by himself while he was not authorized to make such academic review and decision under the Graduate Student Code.

(4) Dr. Herbert Hill's reviews were not with proper understanding of the IIDP handbook and the student's program of study.

(5) Dr. Hill is a faculty member in Chemistry and has no expertise in the student's academic areas of study, but made the academic decision in regard to the student's academic performance.

(6) Dr. Herbert Hill made the decisions of May 19 and June 9, 2000, with incomplete information and inaccurate understanding of the matter:

(a) Dr. Hill received a response to his email inquiry dated 5/5/00 from Dr. Li-Ming Han on June 15, 2000, and no response from Dr. Hao Zhang, but already made the decision of May 19, 2000.

(b) Dr. Allan Black is a faculty in the School of Biological Sciences and was a Graduate School's representative. Dr. Black does not have expertise in the student's academic areas, but provide academic opinion responsive to the Dr. Hill's email dated 5/5/00 as part of Dr. Hill's decisions.

(7) On April 26, 2000, Dr. Karen DePauw dropped the student from Washington State University with a claim that the Petitioner had failed the second preliminary examination. Dr. Karen DePauw also provided a correction with unpublished rules and policies. In fact, the disputed preliminary examination was the only and the first examination the Petitioner took. With a student's written objection, the Petitioner's student status in the IIDP has been pending the result of the appeal process as indicated in the letter dated May 4, 2000. Dr. Karen DePauw provided no further explanation and clarification in this regard.

(8) Dr. Howard Grimes, Dr. Blank, and Dr. Harsh have expertise in Molecular Biosciences--Biochemistry, Kinesiology—Muscle Physiology/Exercise Biochemistry, and Crop and Soil Sciences--Soil Chemistry, respectively. They do not have expertise in the student's academic areas of study, but made an academic review and decision of September 19, 2000. Their decisions and reviews were not based on accepted academic and professional norms.

(9) The memorandum of September 19, 2000, contains misleading and misrepresenting information in regard to the Petitioner's academic performance in the program as indicated in his correspondences with the Graduate School.

(10) Dr. Howard Grimes and the CGSRR failed conducted a fair adjudicative proceeding with respect to the student and constitutional rights of the Petitioners:

(a) The CGSRR failed to conduct a formal adjudicative proceeding in compliance with WAC 504-04 and the Administrative Procedure Act. The model rules of

procedures, WAC 10-08 represent a fair procedure in conducting a formal adjudicative proceeding.

(b) Dr. Grimes and the CGSRR chose to operate the formal adjudicative proceeding with unpublished procedures. The CGSRR never informed the Petitioner of what procedures they had pursued, what evidences they had obtained, and what academic criteria they adopted in their deliberation and render the recommendation. None of documentation under their proceedings was disclosed. The decision of September 19, 2000, has no effect on the student's status in the program. RCW 42.17.250.

(c) Dr. Karen DePauw as the Dean of the Graduate School made the University' s decisions of October 10, 2000, based on Drs. Hill's, Grimes' and the CGSRR's reviews and decisions in which the reviews and decisions were not made with proper procedures and accepted academic norms. The memorandum of October 10, 2000, also contains misleading and representation information in regard to the matter as indicated in the Petitioner's correspondences.

(d) Dr. Karen DePauw withheld the student's requested records in regard to the preliminary examination and the appeals in violation of state laws and federal regulations.

(e) Dr. Donald Hopkins' claimed decision that "I find no irregularity in the procedures used by the Graduate School. You were afforded due process for this review of an academic decision," was made with no supporting facts and evidence, and did not provide explanation and clarification in regard to his decisions. Also, he did not release any record under his review responsive to the Petitioner's requests.

F. The decisions and actions made by Dr. Howard Grimes from November 2002 to February 2003:

(1) The memorandum of November 25, 2002, misrepresented the Petitioner's student status at WSU. Dr. Howard Grimes, the agency ignored the Petitioner's request and refused to provide explanation and clarification as well as make proper corrections.

(2) Dr. Howard Grimes withheld the Petitioner's enrollment registration for Spring 2003 semester due to "a Grad School Academic Deficiency," while the Petitioner is not academic deficient according to the University's definition. Dr. Howard Grimes, the agency ignored the Petitioner's requests and refused to provide explanation and clarification in this regard.

(3) On December 18, 2002, Dr. Howard Grimes made an academic judgment in regard to the Petitioner's academic progress and program completion in Statistics Program while:

(a) Dr. Howard Grimes does not have academic expertise in the academic area of his study.

(b) The authority was delegated to the academic department and the student's academic advisor, according to the Graduate School Policies and Procedures.

(c) Neither the Petitioner's academic advisor/department nor the Petitioner did request for any extension of program completion. Dr. Howard Grimes, the agency was deemed to fully acknowledge the Petitioner's written objection and the facts, but provided no response.

(d) Dr. Howard Grimes is not authorized to make any new rule and policy, but effectively administer and enforce the existing University policies and procedures.

(4) Dr. Howard Grimes deliberately took further action and decision of January 31, 2003, to drop the Petitioner from the graduate program at Washington State University and terminate his Spring 2003 semester enrollment while:

(a) The department and the student's academic advisor did not ask him to do so.

(b) The decisions and actions were based on unpublished rules, policies and procedures.

(c) The Petitioner's graduate student status in the IIDP has been pending the further administrative proceeding and judicial review.

6. This Petition for review is timely filed with the proper court. Petitioner has exhausted administrative remedies available and is aggrieved by the final decisions and actions of the agency. Attachments V and VI show a timeline of actions the petitioner has pursued prior to seeking justice before the court.

7. Petitioner is entitled to relief pursuant to RCW 34.05.370 (3) and/or RCW 34.05.370 (4), and RCW 42.17.340(4) because:

A. The facts indicated that the released records were incomplete. In some occasions, where the agency indicated the record does not exist, the agency discovered and disclosed it later. The records of the examination did exist, but the agency chose not to release. The Petitioner believes the time the agency has taken to disclosing the requested records is not reasonable. The creditability of the agency is in question. The Petitioner has a reasonable doubt in the faith and integrity of the agency in compliance with the public record law. The Petitioner has a reasonable doubt of what records were actually created, obtained, and maintained by the agency. A de novo examination and review by the court in each proceeding the agency had conducted is to be the only mean to seek the truth under God in this regard;

B. According to the facts, the Petitioner has a reasonable belief that the brief adjudicative proceeding was not legitimate. The proceedings were conducted in violation of the constitutional and student rights. The agency claim, "the Committee was properly constituted and that it had authority to hear and decide your case," was not supported by the factual evidences the petitioner presented in the letter of September 23, 2002. The agency provided no evidence and analysis to justify whether the Committee fully and properly conducted the hearing as a brief adjudicative proceeding in

compliance with RCW 34.05, 34 CFR 99, WAC 504-21 as well as all other applicable laws and regulations;

C. Each member of the WSU Board of Regents was appointed by the Governor with approval of the Senate. Before entering upon his duties, each Regent took and subscribed an oath to discharge faithfully and honestly his duties and to perform strictly and impartially the same to the best of his ability. RCW 28B.10.520. The denial access to the Board on January 24, 2003, demonstrated that the Respondent did not impartially discharge their duties under oaths at the same to the best of their abilities. There was no evidence showing that the Respondent had strictly performed their duties in compliance with the oaths;

D. The facts suggest that the academic decision of February 11, 2000, was not careful and deliberate:

(a) The written examination was not constructed according to the student's approved program of study and the agreed content and format of the preliminary examination as well as the IIDP Faculty/Student Handbook.

(b) The final decision of dismissal the Petitioner was arbitrarily made at the end of the written examination portion in January 2000, where both written and oral examinations constitute one examination, prior to the examination was completed.

(c) The chair of the advisory committee denied a petition for reevaluating the written examination dated January 31, 2000, and chose to conduct the oral examination without a constructive solution to the issues in the written examination the student brought before.

(d) The committee members not only did not properly understand the procedures under the IIDP, but chose to apply the procedures of their own departments.

(e) Dr. Duft's memorandum responsive to Dr. Hill's email dated 5/5/00 contains misleading information about the student and the examination procedures.

To date, the agency released the written examination documentation on the portion the Petitioner received a passing grade, but not the other portions the Petitioner received failing grades. Dr. Duft's email of June 7, 2002, indicated that he disposed the examination documentation while the requests for the records were outstanding. Thus, the petitioner has a reasonable doubt in the truthfulness, accuracy and integrity of the academic decisions;

E. The facts and evidences suggest that the agency's decisions and actions under the adjudication of rights and responsibilities of the Graduate Student Code, were not careful and deliberate:

(a) The Associate Dean Herbert Hill's decisions of May 19 and June 28, 2000, were made outside his authority and academic, professional expertise. Dr. Hill had erroneously interpreted or applied the IIDP Faculty/Student Handbook with inadequate understanding of the approved program of study.

(b) The CGSRR's decision and action of September 19, 2000, was made outside their academic, professional expertise. The CGSRR did not "operate with due respect to the rights of graduate student and graduate faculty, including the conduct of confidential interviews, the rights of all parties to review and address allegations, and rights to a fair hearing," as described in the Graduate Student Code, page 8-9. The decision of September 19, 2000, also contained misleading and inaccurate information about the Petitioner.

(c) The Graduate School's decision of October 10, 2000, was made based on the decisions and reviews of Dr. Hill and the CGSRR.

(d) The Interim Provost's decision of February 1 and December 13, 2001, was made based on the Graduate School's decision of October 10, 2000, Dr. DePauw's decisions and reviews.

(e) The Provost's decision of November 6, 2002, was made based on the Interim Provost's decision of February 1 and December 13, 2001.

These decisions and actions were made without explicit facts, evidences and rationales. No explanation and clarification was provided by the person who made such decisions and actions. The University President and the Respondent has ignored the rights of petitions brought before the University;

F. While the Petitioner has exercised his rights to seek all administrative remedies available, Dr. Howard Grimes, who was directly involved with the ongoing dispute matters, took the decisions and actions of November 25 and December 18, 2002, including the withholding the Spring 2003 registration on the METRO, as well as the disenrollment of January 31, 2003. These incidences reflect the agency's retaliation attempt made by Dr. Howard Grimes. This retaliation attempt is also suggested by the subsequent incidences in regard to the temporary employment termination and the student visa status. The agency provided no response to the Petitioner's written appeals;

G. The agency's chief executive officer publicized the principles he believes in at the Fall All-University Address on September 18, 2000:

> (a) "The stakes are high include what I believe to be the heart of the university; the right of the faculty to set the curriculum and decide the course of their research. Like all other rights, this carries with it a considerable responsibility, including a responsibility to justify the process to those who pay for it. Whether the questions are as mundane as the calculus requirement for business majors or as fundamental as why research in medieval literature is important, we must understand that our credibility is in question. We must not squander it by defending the indefensible or that which is only marginally important."
>
> (b) "Let us be up front about our concerns about the education process and try to apply research-based information to improve it. Let us take the position that questioning the importance of our research is

legitimate and we are willing to engage in that dialogue. It is time for us to willingly and patiently explain what we do, how and why we do it, and how it is related to the economic, social, and cultural environment. But it is not time to give in to unreasonable arguments or surrender that which we believe is vital to our mission. "

(c) "All the ideas, findings, processes and conclusions are subjected to rigorous questioning and validation and only the best survive. This is a place where notions about the sun orbiting the earth, the divinity of kings, the supremacy of money, and superiority of one race or religion over another are subject to open challenge. If such a place does not exist independent thought and effective action will be suppressed."

(d) "As a public resource we have a responsibility to explain problems, develop solutions and be accountable for what we do."

The Petitioner had asked the agency's chief executive officer to apply these principles to solving the issues brought before him. The Petitioner received no response. The Petitioner has not seen the agency's decisions and actions following these principles;

H. The admission to the agency's graduate programs and the F-1 Visa constitutes legal binding upon both parties with rights, responsibilities and obligations. The Petitioner is entitled to full right to education at the approved school as well as other legal rights as granted and protected by the state laws and federal regulations, the constitutions of the State and the United States;

I. The Petitioner believe that the agency's decisions and actions have violated the Petitioner's rights as described under the Article I Section 3 of the constitution of the State of Washington states that "No person shall be deprived of life, liberty, or property, without due process of law;" and under the Article I Section 4 indicates that "The right of

petition and of the people peaceably to assemble for the common good shall never be abridge;"

J. The agency did not afford any proper proceeding of genuine academic reviews safeguard against academic misjudgment, and did not provide appropriate internal means of accountability regarding institutional academic decision making. The Petitioner was never afforded any hearing before the decision-making body or bodies, at which the Petitioner shall have an opportunity to rebut the evidence being relied upon for his dismissal and accorded all other procedural due process rights under the Fourteenth Amendment.

To date, the Petitioner has not yet had an opportunity to fully inspect and review the documentation of the examination and the appeals; therefore, the Petitioner reasonably believes that the ultimate decision of the agency was not careful and deliberate. The decisions and actions were arbitrary or capricious. The Petitioner has never received any notice of faculty dissatisfaction with his performance and of the possibility of dismissal prior to the February 11, 2000 examination, and the January 31, 2003 disenrollment; and based on one or more of the following:

(a) the order, or the statute or rule on which the order is based, is in violation of constitutional provisions on its face or as applied; or

(b) the order is outside the statutory authority or jurisdiction of the agency conferred by any provision of law; or

(c) the agency has engaged in unlawful procedure or decision making process, or has failed to follow a prescribed procedure; or

(d) the agency has erroneously interpreted or applied the law; or

(e) the order is not supported by evidence that is substantial when viewed in light of the whole record before the court, which includes the agency

record for judicial review, supplemented by any additional evidence received by the court; or

(f) the agency has not decided all issues requiring resolution by the agency; or

(g) a motion for disqualification under RCW 34.05.425 or 34.12.050 was made and was improperly denied or, if no motion was made, facts are shown to support the granting of such a motion that were not known and were not reasonably discoverable by the challenging party at the appropriate time for making such a motion; or

(h) the order is inconsistent with a rule of the agency unless the agency explains the inconsistency by stating facts and reasons to demonstrate a rational basis for inconsistency; or

(i) the order is arbitrary or capricious; and/or

(j) the agency action is based on based on one or more of the following:

a. Unconstitutional;

b. Outside the statutory authority of the agency or the authority conferred by a provision of law;

c. Arbitrary or capricious; or

d. Taken by persons were not properly constituted as agency officials lawfully entitled to take action.

8. WHEREFORE, Petitioner asks the court for judgment:

A. Invalidating all decisions and actions that were not properly conducted, and/or made in compliance with the University's rules, policies, state and federal laws and regulations; and/or not made in good faith and with accepted academic standard and professional norms; and/or that the agency's decision and/or action was made based on one or more of the causes indicated in the Paragraph 7 above.

B. Granting other relief as follows:

(a) A proper, fair remedy and relief including monetary compensation for damages in personal reputation, physically, psychologically and mentally stressed, as well as opportunity lost in his professional career. The compensation includes full reimbursement of all tuitions and fees, interest/opportunity cost and living expenses since the initial admission to the initial doctoral degree program, regardless of sources of funds the Petitioner had used.

(b) Ordering the agency to make proper correction of all misleading and misrepresentation information related to the student on all University's records and communication including through public media. The agency ensures all recipients be fully informed of the corrected information.

(c) Awarding an amount of the maximum allowed for each day and each record that the Petitioner was denied the right to inspect or copy said public record. Establishing an indefinite life-time period if said public records missing, discarded or destroyed while the requests were outstanding to calculate the number of days for awarding.

C. With regard to genuine academic matter, establishing a proper review procedure that reviewers have academic expertise in the student's areas of study, and at least have the same academic expertise as the committee who made the decisions in dispute. The proper review shall evaluate the examination based on the whole records examined by the Court under RCW 42.17.340. The reviewers shall not be part of the agency and its affiliate.

Invalidating the agency's academic decision of February 11, 2000, and the subsequent decisions, if

the Court finds there is no substantial, constructive evidence of the preliminary examination proceedings to explicitly demonstrating one or more of the following:

(a) The truthfulness, integrity and justification of the agency's decisions and actions;

(b) The decisions and actions were made based on accepted academic and professional norms; or

(c) The agency fully maintains the constitutional and student rights in conducting the academic decisions behind closed doors.

Nothing in this Petition for Review suggests or implies that the Petitioner asks the Court to review and make any genuine academic judgment of passing or failing the preliminary examination.

D. Awarding and assuring the right to education at the approved school with full graduation guarantee in the degree programs, at the expense of the agency, and with no time limit.

E. Awarding costs to Petitioner;

F. Awarding any further relief this court deems proper.

9. The Petitioner asks the court to appoint an attorney/a pro bono attorney to assist and/or represent the Petitioner through all judicial proceedings. This will assure that the Petitioner will proceed with proper court proceedings. The Petitioner has lived on limited sources of financial resources, and with no income since the Respondent by the University's administrators disenrolled the Petitioner on January 31, and terminated his on-campus employment on February 24, 2003.

DATED: July 23, 2003

s/Benjapon Sakkarapope
Petitioner

No. 227081

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

BENJAPON SAKKARAPOPE, Appellant,

v.

STATE OF WASHINGTON,
THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY, Respondent,

BRIEF OF APPELLANT

Benjapon Sakkarapope, Pro se
430 NE Oak #2,
Pullman, WA 99163
Phone: (509) 332-8911

A. ASSIGNMENTS OF ERROR

Assignments of Error[*]

No. 1. The trial court erred in entering the orders of January 16, 2004 granting Respondent's Objections to Subpoena Duces Tecum and Motion to Quash and Respondent's Motion for a Protective Order Re: Discovery.

No. 2. The trial court erred in entering the order of January 29, 2004 denying Petitioner's Motion to Call for Attention and Motion for Authorizing Change of Venue.

No. 3. The trial court erred in entering the order of March 5, 2004 with insufficiency of material facts of evidence to support the finding of facts and conclusion of law, misleading and false statements prepared by the bad faith counsel, and the matter outside of Petition for Review.

No. 4. The counsel had abused of process by making the Motion to Quash dated January 2, 2004 and its amendment; committed professional misconduct and stripped its professional character in filing the pleadings, declarations and other documents which were insufficiently complied with CR 11(a). RPC 3.1, 3.4 and 8.4

No. 5. The trial court erred in hearing the Respondent's Motion for Summary Judgment on February 6, 2004 and entering the Order of March 5, 2004 because the sitting judge was unauthorized to hear and rule any matter in the case, abused of discretion and prejudiced in the proceedings.

No. 6. The trial court erred in excluding Sakkarapope's Memorandum in Support of Petitioner's Defense and his other pleadings from the court consideration of the issues presented: "As such, it is untimely under CR 56(c), and must therefore be stricken by the court in its consideration of the issues presented."

Issues Pertaining to Assignments of Error

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[*] Assignments of Error No. 1-2 are incorporated with the assignments of error set out in Part C of Motion for Discretionary Review ("MDR"), filed on February 17, 2004 which was consolidated with this appeal.

No.1. The issues pertaining to Assignments of Error 1 and 2 set out in Part C of the original Motion of Discretionary Review ("MDR") at 5-10.

No. 2. Which and what administrative decision and/or action were constituted an agency final decision/or action of the dismissals pursuant to RCW 34.05? (Assgn. Err. 3)

No. 3. Which administrative remedy was considered the last remedy sought and constituted a procedural exhaustion, and was the statute of limitation tolled? RCW 34.05.534 and RCW 34.05.080 (Assgn. Err. 3)

No. 4. With respect to Sakkarapope's application for adjudication dated February 23, 2003, did the Board of Regents violate the APA and his constitutional rights? State Cons. Art. I Sec. 3 & 4; the First and Fourteen Amendments of the US Constitution. (Assgn. Err. 3)

No. 5. Does the Public Records Act or any other statute, if exists, prohibit incorporation with RCW 34.05? (Assgn. Err. 3)

No. 6. Did the trial court order of dismissals violate and substantially limit Sakkarapope's rights access to his own records directly related to the disputed issues pending for judicial review, RCW 34.05? (Assgn. Err. 3)

No. 7. Did the Motion for Summary Judgment meet the standard review pursuant to CR 56(c) and was the Motion for Summary Judgment a Case-Not-Fully-Adjudicated-on-Motion? (Assgn. Err. 3)

No. 8. Were Respondent's pleadings and declarations/affidavits not substantially complied with CR 11 and made in bad faith and did the counsel violate the Rules of Professional Conducts and strip its professional character, RPC 3.1, 3.4 and 8.4? (Assgn. Err. 4)

No. 9. Had the trial court abused of discretion in violation of the party's rights and the standard of judicial conduct? (Assgn. Err. 5-3).

No. 10. Had Respondent abused of process and Public Records Disclosure Act in withholding the records of Sakkarapope? (Assgn. Err. 1-4)

B. ASSIGNMENTS OF ERROR OF FINDINGS OF FACT AND CONCLUSION OF LAW

Assignments of Error of Findings of Fact and Conclusion of Law

The Court erred in entering 33 items of the findings of fact and 8 items of the conclusion of law in the Order of March 5, 2004. The assignments of error of findings of fact, No. 1 through 33, and the assignment of error of the conclusion of law, No. 1 through 8, set out as written objections in Sakkarapope's Objections to Finding of Fact and Conclusion of Law Re: Order Granting Respondents' Motion for Summary Judgment, (CP 1246-63).

Issues Pertaining to Assignments of Error of Findings of Fact and Conclusion of Law

No. 1. Were the findings of facts sufficiently supported by material evidences in the agency records, made by the counsel in bad faith and outside of Memorandum Decision of February 17, 2004, (CP1264-72); and was it a burden of Respondent to clearly establish the basis of facts before the court? CR 52(b); CR 11(a).

No. 2. Did the Counsel commit professional misconduct in presenting the statements of fact and conclusion of law insufficiently supported by evidences in the agency records? CR 58(a)(2); RPC 3.1, 3.4 and 8.4.

No. 3. Had the trial court abused of discretion by not conducting judicial review of facts as required by RCW 34.05.558? CR 58(a)(1).

No. 4. Did the trial court arbitrarily and capriciously adopt the proposed statements of facts and conclusion of law prepared by the counsel in bad faith and with misleading and false statements?

No. 5. Was Sakkarapope's objection to the statement of finding of fact and conclusion of law on March 5, 2004, effective? (CP 1246-63).

C. ASSIGNMENTS OF ERROR OF ADMINISTRATIVE DECISIONS AND ACTIONS

Assignments of Error of Administrative Decisions and Actions

No. 1. The dismissal of Sakkarapope from his IIDP was arbitrary, capricious and in violation of student and constitutional rights.

(a) The IIDP preliminary examination committee chaired by Kenneth Duft arbitrarily and capriciously rendered academic decision of February 11, 2000, substantially deviated from the standard accepted norm in violation of Sakkarapope's student and constitutional rights.

(b) The University's dismissal of Sakkarapope from the IIDP, e.g., decisions dated April 26 and 27, May 19, June 28, September 19, October 10, 2000, and February 1 and December 13, 2001, November 6, 2002, as well as January 10 and 15, 2003, was arbitrary and capricious and in violation of Sakkarapope's student and constitutional rights.

No. 2 The University's dismissal from the master program in Statistics was arbitrary, capricious and in retaliation of Sakkarapope and in violation of student and constitutional rights.

No. 3. The University's denials of Sakkarapope's education records requests were arbitrary, capricious and in violation of FERPA and Public Records Disclosure Act. RCW 34.05; 34 CFR 99; FERPA.

(a) The Student Records Committee ("SRC") arbitrarily, capriciously, erroneously interpreted and applied the law and acted outside of the statutory authority in rendering the decisions of April 5, 2002.

(b) Provost Robert Bates arbitrarily and capriciously rendered the decisions of November 6, 2002, concurring the SRC's decision, and adopted an unpublished and unlawful review procedure in violation of Sakkarapope's rights, and withheld the agency records under his review.

No. 4 The University had abused of discretion and breached an educational contract with the student.

(a) The University's officials had abused of discretion and committed official misconducts and torture since 1993. RCW 9A.80.010.

(b) The Board of Regents arbitrarily and capriciously denied the Application for Adjudication of February 23, 2003 in violation of student and constitutional rights and their oaths. RCW 28B.10.520; RCW 34.05

(c) The University breached educational contracts with the student.

Issues Pertaining to Assgns. of Error of Administrative Decisions

No. 1. Issues Pertaining to Assgn. Err. Adm. No. 1

(a) What are the minimum procedural requirements of due process right in regard to academic dismissal under the Fourteenth Amendment and the Article I Section 3 and 4, the State Constitution?

(b) Is a formal adjudicative proceeding or formal appeal in regard to academic decisions under the Graduate Student Code ("GSC"), exempt from the APA, RCW 34.05?

(c) Did the IIDP advisory/examination committee capriciously and arbitrarily render the decision of February 11, 2000 deviated from the standard accepted professional norm and in violation of Sakkarapope's student rights as described in the GSC and constitutional rights?

(d) Did the University fully maintain the rights and meet the expectations as described in the GSC and the IIDP Faculty/Student Handbook?

(e) Has the University deprived of Sakkarapope's procedural due process rights and liberty interest guaranteed by the state and federal constitutions?

No. 2 Issues Pertaining to Assgn. Err. Adm. No. 2.

(a) Were Howard Grimes actions of terminating Sakkarapope from the master program in Statistics constituted a retaliation of his appeals?

(b) Did Howard Grimes capriciously and arbitrarily terminate Sakkarapope from the program, abuse of discretion, act

outside of his authority and commit official misconducts? RCW 9A.80.010.

(c) Was Sakkarapope constitutionally afforded due process right in regard to the dismissal from the master program? Alternatively, was the dismissal of January 31, 2003 unconstitutional?

No. 3 Issues Pertaining to Assgn. Err. Adm. No. 3.

(a) Is the "university's student records committee" legally the same as the "Student Records Committee" ("SRC") and "Registration and Record Committee"? WAC 504-22.

(b) Did Richard Backes have conflict of interest while conducting the hearing of March 27, 2002?

(c) Were the brief adjudicative proceeding of March 27, 2002 and the review of the April 5, 2002 decision by Provost Bates substantially complied with RCW 34.05.485 and RCW 34.05.491, respectively?

No. 4 Issues Pertaining to Assgn. Err. Adm. No. 4.

(a) Did the Regents fail to comply with the oaths taken by refraining themselves to impartially perform their official duties? RCW 28B.10.520

(b) Had the University's faculty/officials/Regents abused of discretion and refrained to perform their duties? RCW 42.20.100; RCW 9A.80.010.

(c) Has the University breached educational contracts with the student?

(d) Did Patriya Tansuhaj, James McCullough, Donald Stem and other faculty members in the Dept. of Marketing and the University's Campus Police Department commit torture conducts in violation of Sakkarapope's constitutional rights? State Cons. Art. I Sec. 3, 4 &5; the First, Fourth and Fourteen Amendments of the US Constitution.

D. STATEMENT OF THE CASE

(1). Relevant incidences prior to May 1999, Individual Interdisciplinary Doctoral Program ("IIDP").

(a) While he was Associate Dean at Prince of Songkla University, Thailand, Sakkarapope's initial admission to the

Department of Marketing, WSU, was arranged by the University represented by Patriya Tansuhaj. (CP 138). During 1993-5, Sakkarapope was mistreated and he did not fail to complete his doctoral degree in Marketing, but he was forced to move out from the program by various means including the use of academic discretion as a tool and the retaliation technique making false allegation of misconducts, such as the 1995 unreasonable search by WSU polices and the report to the immigration authority* (CP 233-8).

Karen DePauw had full knowledge of the disputes in the Dept. of Marketing, and said that, "Benjapon, I encourage you to go to other school to complete your phd. It is not because you don't have ability to finish your doctoral degree, but you are not compatible with WSU." (CP 139-238;1178-80).

By following Val Miskin's available options, Sakkarapope chose to transfer to the Dept. of Economics. After a change of department was made in Spring 1995, Miskin and some faculty of Marketing asked Robby Rosenman to withdraw the admission. With a mediation of a faculty, on October 6, 1995, the Dept. accepted Sakkarapope to the program retroactive to the beginning of the Fall 1995, and then later refused his continuation in its doctoral program. (CP 188, 239-45)

(b) In Spring 1997, Sakkarapope applied to a doctoral program in Agricultural Economics, (CP 289-302):

(i) The department imposed a special rule for admission by having Sakkarapope take the 1997 qualifying examination if he passed one or both he would be admitted to the program, (CP 299).

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* The records of the incidences were the subjects of the subpoena dated January 12, 2004 which was quashed by the trial court on January 16, 2004, but the University supplied the information of stalking allegation to the immigration authorities attacking Sakkarapope's moral character in the removal hearing of Immigration Court dated April 22, 2004, and denied his public record request. Sakkarapope were never informed and afforded an opportunity to inspect and review such allegation.

(ii) Sakkarapope passed one examination, but the department refused to admit him to the program, (CP 289). With a support by Robert Allan, the department eventually admitted him to the program.

(iii) In Fall 1997, Paul Barkley, Interim Chair, said, "You have a big cloud on top of your head, behave yourself."

(iv) In summer 1998, the department failed Sakkarapope on the quantitative qualifying examination and did not allow him to retake the exam by imposing a rule that he already took twice; in fact he took the exam only one since he was admitted to the program. There was a dispute of how the department counting the number of the exam taken and an appeal of the decision was filed, (CP 294-300), but the department offered him a support through the IIDP by having Duft served as a chairperson of the advisory committee, instead of Wandschneider, (CP 304-5). The disputed issues remain unsolved.

(2). Nature of Sakkarapope's Individual Interdisciplinary Doctoral Program* ("IIDP") with a joint master program in Statistics.

> "The two programs of study, although separate, will essentially be treated as a single integrated program of study by the Graduate School, thus allowing simultaneous admission/enrollment/progress toward both degrees." "The M.S. and Ph.D. degrees will be awarded as requirements for each are completed. Either degree can be obtained first,..." (CP 308-9).

(a) After going through a program proposal preparation under Gail Stearns' supervision, Sakkarapope's program proposal (CR 72-133) was approved by the Graduate Studies Committee, the Graduate School. His

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* The IIDP does not have a physical department like other academic departments and is housed in the Graduate School. In 1998-9, a formal acceptance into the IIDP required to study in a recognized graduate program for at least one year and an approval of a formal program proposal. (*See* IIDP Faculty/Student Handbook, CR 507-29)

program of study is an integrative study of three applied disciplines across three academic departments—Agricultural Economics, Economics, and Finances, and endorsed by the three departments (Certified Records--Resending, "Grad. CR," at 126, 138 and 490)

(b) In Summer 1999, Sakkarapope filed a Declaration of Intent to obtain approvals of pursuing a master program in Statistics as a joint degree program with the IIDP* (CR 29-30). Instead of maintaining a record as a doctoral student in the IIDP, the Graduate School by Margo Balzarini changed Sakkarapope's record of doctoral student status to a graduate student in a master program in Statistics, (CR 19-20, 23, 747). Hao Zhang has served as Sakkarapope's academic advisor in the master program. Sakkarapope filed a program of study† in Spring 2001, which he intended to complete his coursework for the joint degree program.

(c) The changes in Sakkarapope's IIDP advisory committee.

(i) The initial advisory committee consisted of five members. Phillip Wandschneider was arbitrarily withdrawn from the advisory committee in March 1999, and later substituted by Hao Zhang in October 1999, but the name of Wandschnieder remained served on the committee due to Zhang's pending graduate faculty status. (CP 304-5).

(ii) In November 1999, Li-Ming Han was substituted for John Kling due to his departure from the University. (CR 18).

(3). The IIDP Preliminary examination (CR 507-29).

(a) Both written and oral preliminary examinations constitute ONE IIDP preliminary examination. (CR 520)

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* There are three categories of master degree program options—first master degree, second master degree, and joint master degree, which are governed by different rules and requirements. (*See* GSPP at 10-11, CR 530-52; CP 307-9)

† A program of study may be filed at any time, at least, one semester prior to final examination or no later than the beginning of the semester preceding the semester of graduation. (GSPP at 10; CR 530-52)

(b) In May 1999, the IIDP advisory committee agreed upon a content and format of the IIDP preliminary examination, the IIDP Faculty/Student Handbook, (CR 512-21). The written exam consisted of four exams: Microeconomics Core Exam for Economic Dept., Economic Theory Preliminary Exam for Agricultural Dept., Finance Theory for Finance Dept., and Agribusiness Management and Marketing, (CR 74-8).

(c) The IIDP advisory committee granted credits for the two exams: Microeconomics Core Exam and Economic Theory Preliminary Exam for fulfilling the IIDP preliminary exam on the portions of Depts. of Economics and Agricultural Economics.*, which Sakkarapope previously took the exams and received passing grades. These two credited passing exams accounted for 50 percent of passing or satisfactory result of the IIDP written prelim exam representing the two Depts.--Economics and Agricultural Economics. Sakkarapope was then required to take the two remaining exams on January 12 and 14, 2000, (CR 64-71, 74-8). The two remaining written exams were served for the Dept. of Finance and additional exams which were not part of the previous examinations.

(d) At the meeting dated October 19, 1999, the committee also ruled that Sakkarapope would allow two attempts to pass the IIDP preliminary examination. (*See* Holly Wong's hand written note at the meeting, (CR PR #02-56 at 296-435; CR 245-61).

(e) On November 5, 1999, Duft arbitrarily changed the agreed content of the written exam on the portion of Agribusiness Management to the Farm Credit System and the exam questions were drawn from the two books given by Duft, which was not part of any coursework and the agreed

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* These two exams are part of the departmental qualifying examinations which are not officially recognized by the GSPP as a doctoral preliminary examination. In both departments (NOT in the IIDP), students are required to take and pass its qualifying examinations to be eligible for a doctoral prelim exam described in the GSPP.

content and format of the prelim exam approved and reaffirmed by the committee at the meeting of October 19, 1999. (Grad. CR 170-86)

(f) On November 15, 1999, Li-Ming Han changed the content of the Finance Theory portion to include the content of Empirical Methods in Finance, which was not part of the agreed content and format of the preliminary examination. Han refused to discuss any misunderstanding with Duft. (Grad. CR 170-86, 245-61).

(g) After consulting with Karen DePauw, Duft issued a memorandum of January 26, 2000, to the committee members that Sakkarapope's program of study could not be terminated without affording him an oral prelim exam portion. Duft, then, verbally informed the student the unsatisfactory result of the written exam and instructed him to schedule for the oral exam within 30 days. (Grad. CR 170-86, 245-61)

(h) On January 31, 2000, Sakkarapope filed a written appeal of the unsatisfactory result of the written exam and requested the committee to reconsider the discrepancies in the written exam. Duft refused to reconvene the committee to solve the dispute, but scheduled the oral exam on February 11, 2000. (Grad. CR 170-86, 245-61).

(i) The incidence of the dispute with Duft significantly affected Sakkarapope's health condition which was brought him under medication since February 3, 2000, and his preparation for the oral examination. (Grad. CR 168-168a). Zhang was the only committee member who had knowledge of Sakkarapope's health condition and the oral examination was under his watch if urgent help needed.

(j) On February 11, 2000, the oral examination proceeded while Sakkarapope was under medication and he received a failing result with no second attempt to retake the preliminary examination despite of the two attempts granted in October 1999. Zhang and Han made a phone call to comfort Sakkarapope at that night. Over some hours phone conversation, Han indicated that Duft instructed the

committee that the oral examination was counted as a second attempt. The evaluation also included the 1998 disputed quantitative qualifying examination in fulfillment of a doctoral program in Agricultural Economics which was not part of the IIDP preliminary examination, but the unsolved dispute with the Dept. of Agricultural Economics. Han also advised the student to discuss the matter with Dean DePauw. (*See also*, CR 1-36, 134-50; Part D(1)(b)(iv)).

(4). Adjudication of Rights and Responsibilities ("ARR"), Graduate Student Code ("GSC").

(a) On February 15, 2000, Sakkarapope immediately filed an appeal of the preliminary examination before his IIDP department chair, Karen DePauw, who held both department chair and Dean of the Graduate School. With a follow-up on March 29, 2000, DePauw decided to bypass her departmental review to accept a formal appeal through the ARR, GSC.

(b) On April 19, 2000, Sakkarapope filed a formal appeal before the Graduate School which was handled by Associate Dean, Herbert Hill and met with Hill on April 24, 2000.

(c) While a formal appeal was underway, on April 26, 2000, Dean DePauw dropped Sakkarapope from Washington State University, with a false basis, "...students who have failed the preliminary examination for the second time can no longer pursue work leading to the doctorate." The 2000 IIDP prelim exam was the only prelim exam Sakkarapope took since his initial admission. With a corrected copy of April 27, 2000, mailed a week later on May 1, 2000, the basis of the decision was changed to an unpublished rule, "students who have failed the preliminary examination and are not recommended for a second examination...," (CR 243-4).

(d) With Sakkarapope's opposing letters dated May 1 and 4, 2000, DePauw issued a decision that:

> "[b]ecause you are also pursuing a master degree in statistics, I will allow you to continue your studies towards completion of the masters degree but you

will not be allowed to continue in the doctoral program pending the outcome of the appeal process." (CR 234-42).

(e) Associate Dean Herbert Hill asked the committee members to provide written responses to the four questions in his email of May 5, 2000. Duft made a response with no date. Inaba, Wang and Wandschneider provided responses dated May 11, 12 and 19, 2000, respectively. The Graduate School's Representative responded on May 11, 2000. Han's response of June 5, 2000 was received by the Graduate School on June 15, 2000. Zhang did not write any response. Without Han's and Zhang's, Hill rendered an academic review of May 19, 2000. Kenneth Duft also stated in his memorandum dated May 8, 2000 that:

> "Given the long and sordid history attached to this gentleman's course of study here at WSU, it occurred to me that you and I might wish to visit about this note from the Graduate School before I construct a reply. Herb Hill has also been attempting to reach me by phone, but I'll withhold my response until we can discuss this matter." (CP 306)

With a request for reconsideration of June 9, 2000, Hill rendered a decision of June 28, 2000 and not only did not provide a direct response to the issues addressed, but brought up more new issues. (CR 203-33).

(f) On July 12 and 24, 2000, Sakkarapope filed an appeal of Hill's decisions before the Dean of the Graduate School. A Committee on Graduate Student Rights and Responsibilities ("CGSRR") was formed and chaired by Howard Grimes. (CR 193-209; Grad. CR 392-430).

(g) On September 1, 2000, Sakkarapope met with the CGSRR and submitted three sets of documents. The CGSRR took handwritten note on both separate sheets and on the documents. The CGSRR conducted confidential interviews of undisclosed faculty and administrator and then rendered a

decision of September 19, 2000. To date, the CGSRR still withholds the agency records of the CGSRR proceeding.

With Sakkarapope's additional statements dated October 5, 2000, Dean DePauw rendered a decision of October 10, 2000 concurring with the examination committee, Hill and the CGSRR. With Sakkarapope's request for reconsideration dated November 6, 2000, Dean DePauw denied and instructed him to appeal before the Provost. (CR 164-92)

(h) On December 14, 2000, Sakkarapope filed an appeal before Interim Provost Ronald Hopkins and the decision was made on February 1, 2001. After unsuccessful attempts to obtain the records of the IIDP examination and the appeals, a reconsideration of December 7, 2001, was made and denied by Hopkins on December 13, 2001. (CR 262-76, 164-84)

(i) After unsuccessful attempts to obtain his education records in regard to the IIDP prelim exam and the appeals over years, Sakkarapope filed an appeal before Provost Bates and WSU President accordingly. Provost Bates rendered the university decisions of November 6, 2002* and January 10, 2003. WSU President provided no response. (CR 757-1049).

(j) After unsuccessful attempts to seek administrative remedy through the university president and provost, Sakkarapope sought a remedy from the Board of Regents through a procedure and authority described in the Faculty Manual page 6:

> "The approach to the Board of Regents is through the President of the University, who is secretary ex officio of the Board. Any University committee or individual shall be accorded the opportunities to present a direct appeal to the Board of Regents through this channel."

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* There are two separate decisions entered on November 6, 2002, by Provost Bates.

Sakkarapope showed his full intention and appeared before the Board at the meeting dated January 24, 2003. The President of the Board refused to allow him to address the matters before the Board. (CR 883-90)

(5). Howard Grimes had attempted to terminate Sakkarapope from his master program in Statistics since August 26, 2002, "Where is he-how did he get there." (CR 296)

(a) Sakkarapope's academic advisor and department chair did not make any recommendation to the Graduate School and to drop him from the M.S. Program. He has not received any notice of unsatisfactory performance from the Department of Statistics.

(b) Howard Grimes made false statements in the memorandum of November 25, 2002* and provided no explanation and intentionally refused to make a proper correction. (CR 281-3, 288-96);

(c) The notes† on the agency record, (CR 669):

(i) Dated 12/2/02, "Howard Grimes in exercise room. He may be willing to let Ben continue, but the letters (regarding appeal) have to stop;" (ii) Dated 12/6/02, "and earlier conversation: Hao Zhang (major professor) Believes that Ben is OK as far as degree, making 'normal progress.' Was surprised to hear that Grad School believes he is finished at WSU. Knows about Ben's attempt to appeal results of comprehensive exams...;" (iii) Dated 12/6/02, "Nancy Intermill, prog. Coordinator in Statistics says as far as they know Ben is OK to continue his program. Have not received anything from Grad School informing them otherwise..;" (iv) Dated 4/11/03, "Zhang..reporting him if he could be persuaded to give up his appeal effort for Phd and be

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* The same memorandum was issued three times; the first was dated on 10-22-02.

† It is believed to be the handwritten note of Robert Cassleman.

allowed to stay and finish M.S.? He can ask Ben next Thursday. I said I would check w/ Mary F."

(d) Without informing Sakkarapope and consulting with his academic advisor and department chair, Grimes, arbitrarily dropped him from the system on 10/22/2002 while he was out of the country to attend his father-in-law funeral, (CR 290).

(e) With an advice of Cassleman, Zhang convinced and asked Sakkarapope to initiate a request for an under-enrollment permission to support his memorandum of December 12, 2002, (CR 279-80). On December 18, 2002, Grimes arbitrarily imposed a program completion deadline of January 27, 2003, (CR 278). Then, Grimes premeditatedly terminated him from the program on January 31, 2003. (CR 351)

(f) With Sakkarapope's requests and/or appeals of November 25, December 6, 2002, and January 5, 7 and 17, 2003, and February 6, 2003, Grimes provided no response. WSU President, Provost and the Board of Regents took no action. (CR 284-373) No hearing or review was afforded.

(6). On February 23, 2003, Sakkarapope filed an Application for Adjudication before the Board of Regents pursuant to RCW 34.05.

(a) With follow-ups, the Board of Regents did not acknowledge a receipt of the application. After the period of ninety days was expired, on June 12, 2003, Sakkarapope filed a follow-up request for reconsideration of the deemed denial of the application for adjudication.

(b) On May 7, 2003, Sakkarapope filed a petition before the Governor to enforce the oaths the Regents filed with the Office of the Secretary of State. With follow-ups dated June 18 and July 16, 2003, the Office of Governor provided no response. Sakkarapope then filed a Petition for Review, ("PFR"), on July 23, 2003. (CP 1-81, 251-8)

(c) WSU's counsel, Steve Vinsonhaler, communicated with the official of the Office of the Governor:

> "Do not respond to this fellow. ATG has been interacting with him for nearly 10 years-they've advised him to get an attorney. He's currently in the US in an expired student VISA, and has been reported to INS. He had every opportunity to successfully complete his studies, but did not perform. DON'T ENGAGE HIM, or a pen pal he will be." (CP 247)

(7). The statement of the case set out in Part D of the original Motion for Discretionary Review ("MDR") at 10-18.

(8). Educational Records Requests and Public Records Requests.

(a) Under FERPA, Sakkarapope made requests for his educational records of the prelim exam and the appeals along with the appeals under the ARR, GSC. The University partially released the records, (CP 1-81).

(b) In the letters dated June 6 and December 6, 2001, the University imposed a public record procedure on Sakkarapope's request under FERPA and refused to release the records unless a public record request was made. In Sakkarapope's letter of December 5, 2001, a request for a hearing to release the records for inspection and review was made and the hearing was held by the SRC on March 27, 2002. The decision was rendered on April 5, 2002, stating that "the University has fully complied with your request for the release of education records under FERPA," (CR 433-4; CR 415-506)

(b) Sakkarapope made requests for his educational records under Public Records Act. (CP 36-40). On July 3, 2002, the University additionally disclosed the written exam on the portion Sakkarapope received a passing grade, but still withholds the remaining portions he received failing grades. (CP 65-8)

On June 7, 2002, Duft notified Pauli that "...all those old materials were disposed of." (CP 249) No further clarification was made.

(c) In the letter dated July 19, 2002, the University notified Sakkarapope a FERPA complaint procedure (CR PR #02-84 at 7). A complaint was accordingly filed with the Family Policy Compliance Office ("FPCO") on September 27, 2002.

(d) On September 23, 2002, a request for review of the brief adjudicative proceeding conducted by the SRC was made before the Provost, (CR 637-39). Provost Bates rendered the decision of November 6, 2002 (CR 620-21). Sakkarapope appealed before the President and the Board of Regents and received no response. The University has still withheld substantial records of the examinations and appeals and not yet filed with the court. The subpoenas of the records were quashed by the trial court on January 16, 2004. (CP 553-655, 757-1049; *see* MDR)

E. ARGUMENT[*]

(1) Arguments to Issues Pertaining to Assgn. of Error 1 and 2

The arguments to the issues pertaining to Assignments of Error 1 and 2 set out in Part E of the original MDR at 18-41

(2) Arguments to Issues Pertaining to Assgns. of Error 3 though 10:

(a) The arguments pertaining to Issue 1 though 10 previously set out in the followings:

(i) Complaint, Objections to Motion for a Protective Order Re: Discovery and Counterclaim, (CP 1080-6). Defense and Objections to Motion for Summary Judgment, (CP 1121-28).

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[*] Appellant intends to avoid unnecessary redundant in this brief. Arguments will be briefly addressed. The details of the arguments and issues shall be referred to the originals accordingly in the Motion for Discretionary Review and other pleadings.

(ii) Motion for Pending Motion for Summary Judgment (CP 1115-9) and Objection to a Continuance of Motion for Summary Judgment (CP1194-5)
(iii) Memorandum in Support of Petitioner's Defense (CP 1129-93) and Memorandum in Opposing of Memorandum Decision on Motion for Summary Judgment (CP 1215-1239).

(b) The arguments are briefly presented as follow:

(A) Finality of agency action or order and statue of limitation. An appealable decision is not a final agency decision. *State Ex Rel. Beam v. Fulwiler,* 76 Wn.2d 316. The label affixed to the action by the administrative agency is not determinative of its finality. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon. *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181.

A decision "ripe for review" and fully qualifies it as a "final decision." *Dept. of Ecology v. Kirkland* 84, Wn2.d 25, 523 P.2d 1181. Where doubts as to the finality of such communications must be resolved in favor of the citizen. *Valley View v. Redmond*, 107 Wn.2d 621, 733 P.2d 182, In *LEE v. JACOBS*, 81 Wn.2d 937, 506 P.2d 308 (1973), a state agency argued that certain letters denying benefits were final orders in a workers' compensation dispute. The court stated:

> "That is nonsense. If every letter from every agency of state government which arrives on a lawyer's desk must be scrutinized to determine if it contains an appealable order, indeed a burden of considerable magnitude will have been created by fiction."[*LEE*, at 940-41; *Valley View v. Redmond*, 107 Wn.2d 621,733 P.2d 182].

The Board of Regents is a governing-body of the University and has full power delegated by the State Constitution. RCW 28B.30.150(1). This is the last resource within the agency authority one can seek administrative relief. Individuals may file a direct appeal before the Board

of Regent through the President of the University (*see* Part D(4)(j)).

Where Sakkarapope made a direct appeal before the Board pursuant to RCW 34.05, and the issues were not yet considered by the Board, the decisions made by the University's officials were not agency final orders. By the ignoring of the Board, those decisions became final and reasonably ready for judicial review as deemed denial of the reconsideration request of June 12, 2003 (CR 757-1049).

Because of Sakkarapope's continued efforts, it cannot be said that he had exhausted his administrative remedies at the time of the agency's initial action. *Hayes v. City of Seattle*, 131 Wn.2d 706, 934 P.2d 1179. The facts in the records show that Sakkarapope had persistently sought administrative relief pursuant to RCW 34.05.534 and RCW 34.05.080 through possible opportunities and until the last remedy sought on June 12, 2003. The PFR was timely filed with the court on July 23, 2003.

Indeed, Respondent's claim of finality of February 1, 2001 was without merit. Despite of the merit of the issues presented at hearing of February 6, 2004 (RP 51-77), the trial court obviously erred in dismissing for lack of subject matter of jurisdiction. The order was not warranted by existing authorities of the doctrines of finality and administrative remedy exhaustion. The justice has not yet been done. (Assgn. Err. 3).

(B) Constitutional due process right. Respondent already admitted that "Academic dismissals are not excluded and therefore the APA is the sole mechanism for Mr. Sakkarapope to file this appeal of his academic dismissals." (CP 964). The ARR of the GSC is not exempt from the APA. The facts of the appeals within the agency sufficiently show that Sakkarapope's application for adjudication of February 23, 2003, was ignored and the failure to afford him substantial due process prior to dismissal constitutes a violation of the APA and his constitutional rights. Such dismissal was unconstitutional.

(C) Public Records Disclosure Act. There is no such provision of law prohibiting incorporation of RCW 42.17 within with Petition for Review, RCW 34.05, and no conflict between the two statutes, (CP 1190-3). While Respondent has no standing and right to file a motion to quash, the trial court not only arbitrarily quashed Sakkarapope's educational records which are subject to full disclosure under FERPA and RCW 42.17, but dismissed the action against WSU regarding the Public Records Act, where a motion to show cause was already filed. No existing authority was cited to warrant the order of dismissal. Such order was arbitrary, unconstitutional and in violation of his rights under RCW 42.17 and FERPA, (CP 1075-9; *see* MDR). RCW 42.17.340. (Assgn. Err. 3).

(D) The dismissal of January 31, 2003 was not on academic ground, but rather a claimed violation of the University's regulation. The facts and arguments presented in Part G show that the dismissal was arbitrary and premeditated, and not based on academic reason (CR 669). The dismissal due to the claimed deadline arbitrarily and premeditatedly imposed by Grimes was not on academic ground. Grimes had premeditatedly abused of discretion and committed official misconduct. The subject matter is readily for a due process hearing. *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973). No review or hearing was afforded. While acknowledging the merit of the matter on February 6, 2004, (RP 68-77), the trial court still arbitrarily affirmed the dismissal on academic ground, thus, such order was unconstitutional. (Assgn. Err. 3)

(E) Standard review and abuse of discretion. The Motion for Summary Judgment did not meet the standard review pursuant to CR 56(c). The Motion was also a Case-Not-Fully-Adjudicated-on-Motion (CP 1121-8). Respondent asked the trial court to enter an order on the subject matter outside of the PFR. Such order substantially limiting the party's rights was outside of the scope of the court duty, thus, unconstitutional. CAR 6

While the trial court already admitted Sakkarapope's late response as part of the proceeding, the court then stated at the conclusion of the hearing that it found genuine issues, saying that "I see a lot of merit to those issues. I've got some reluctance on the – getting into the merits,"(RP 72). The court's first opinion shows that the genuine issues exist, (RP 31-78). However, after making up his mind over a week, the court found an easy way to arbitrarily stricken Sakkarapope's late response where his right to defend was not waived. *French v. Gabriel*, 116 Wn.2d 584, 806 P.2d; *Voicelink Data Servs., Inc. v. Datapulse, Inc.*, 86 Wn. App. 613, 625, 937 P.2d 1158 (1997. The ruling stricken the right to defend was unconstitutional and arbitrary.

At the presentment, an objection to the finding of facts and conclusion of law was properly made and it stays effective. (RP 79-102) The trial court did not conduct a judicial review of the disputed facts confined with the agency records, but place the burden on this court to solve the disputes. Also, the pleadings, depositions, answers to interrogatories, and admissions are not yet fully on file (CP 1215-39).

When ruling on a summary judgment motion, the court is to view all facts and reasonable inferences therefrom most favorably toward the nonmoving party. *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). A court may grant summary judgment if the pleadings, affidavits, and depositions establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Ruff v. King County,* 125 Wn.2d 697, 703, 887 P.2d 886 (1995); CR 56(c)*; Lybbert v. Grant County,* 141 Wn.2d 29.

A judge abuses his discretion when no reasonable judge would have reached the same conclusion. *Byerly v. Madsen,* 41 Wn. App. 495, 704 P2d 1236, Review Denied, 104 Wn.2d 1021 (1985). There is an abuse of discretion when the discretion exercised is" manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."

State Ex Rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

Where the genuine issues and the disputed facts exist, Respondent did not meet its burden of the standard review on a motion for summary judgment, CR 56(b), and therefore, it was not entitled to judgment as a matter of law. Is there any reasonable judge in the State of Washington able to reach the same conclusion of the trial court? If there is no such judge, then the judge of the trial court abused his discretion, the order was arbitrary and made in error. (Assgn. Err. 3-7).

(E) Mistrial and Counsel misconduct in judicial proceedings[*]**.** Respondent's pleadings and declarations/affidavits did not substantially complied with CR 11 and were made in bad faith (CP 1080-86, 1047-74). Thus, the counsel violated the RPC 3.1, 3.4 and 8.4.

As a professional, the counsel fully understood that Respondent is not either a student or parent of an eligible student, it does not have right and standing to file a motion to quash Sakkarapope's subpoena of his educational records. By making such Motion to Quash dated January 2, 2004 (CP 560-563, 1039-1041), the counsel consciously abused of process to obtain a privilege which was not entitled to, but has obligation to comply with a lawful subpoena, 20 U.S.C. §1232g(b)(2)(B), §1232h, 34 C.F.R. §99.30, §99.31. Such action was taken in violation of the party's rights under FERPA and Public Records Act. 34 CFR 99; RCW 42.17. (*See* also, MDR for more arguments). Such conduct of the counsel shall have no place under the constitutions.

The trial court order substantially limits Sakkarapope's rights access to his own educational records directly related to the disputed issues pending for judicial

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[*] *See* also, Objection, Answer and Countermotion to Strike Respondents' Pleadings and Counsel Misconducts, Motion to Stay of Proceeding to Enforce a Judgment and Motion to Strike Declaration and Counsel Misconduct, and Rebuttal and Amendment, filed with this court on April 26 and 28, 2004.

review pursuant to RCW 34.05; the order was unconstitutional. (*See* MDR).

Because a motion and affidavit of prejudice was filed on January 28, 2004, and legally effective, the sitting judge had lost jurisdiction over the case. RCW 4.12.040(1); RCW 4.12.050. With inclusion of the above facts and arguments, the trial court's rulings in the case were unconstitutional and the proceedings should be declared a mistrial.

F. ARGUMENT TO FINDING OF FACT

(1) Arguments to Material Facts Confined with Agency Records

Respondent has a burden to provide evidence of material facts to support the Motion. The details of arguments to material facts set forth as the written "Objections to Finding of Fact and Conclusion of Law Re: Order Granting Respondents' Motion for Summary Judgment," dated March 5, 2004, (CP1246-63). The arguments to material facts confined with the agency records are summarily presented in this section:

(a) A M.S. program in Statistics is a joint program option, not a regular master degree program. (*See* Part D(2)(a) and (b); CP 307-313). There is NO specific rule establishing a deadline for degree completion. RCW 42.17.250. A schedule for a final examination is upon student's readiness and his academic advisor.

(b) The request for time extension, NOT a program completion deadline extension, was for issuing a replacement of I-20ID, a document in compliance with immigration regulations, not a university regulation, and made by following Cassleman's advice. The University cannot claim such establishment of a program completion deadline against Sakkarapope while he followed its advice and instruction. An application of unpublished distinction between the words is an abused of discretion. *State ex rel. Bartlett v. Pantzer*, 489 P.2d 375 (Mont. 1971).

(c) A regular enrollment is not required when a student has completed his coursework requirement. An enrollment requirement by the immigration regulation is not a GSPP. (CR 533-6) An under-enrollment after a student has completed his coursework in fulfillment of program requirement is permissible and under supervision of his academic advisor and International Student Advisor. 8 CFR 214.

(d) Grimes and the counsel are not authorized to interpret and enforce the INS regulations. 8 CFR 214. Grimes and the counsel shall not assert and adopt their own legal opinions as legal authority to claim that Sakkarapope violated the GSPP and the INS. RPC 3.1, 3.4 and 8.4. The University cannot claim any INS rule, which is outside of its authority to dismiss the student.

(e) The content of Grimes's memorandum of January 17, 2003 was misleading and inaccurate. (CR 876-8) Sakkarapope made objections to such misleading and inaccurate information in his letter to Provost Bates dated July 11, 2003. (CR 399-403)

(2) Arguments to Issues Pertaining to Assignments of Error of Findings Fact and Conclusion of Law

(a) Arguments to Issues: Assignments of Error of No. 1.

The statements of findings of fact were written in bad faith and outside of Memorandum Decision of February 17, 2004, (CP1205-1213). The statements were capriciously prepared by the state attorney and arbitrarily signed by the judge despite of Sakkarapope's objection to its truthfulness and accuracy.

The trial court did not conduct a judicial review of facts confined to records, RCW 34.05.558, but the trial court took an easy route and ignored its statutory duty by stating that "[a]ny objection, dispute or disagreement with this order must be addressed to the appellate court, not this trial court," (CP 1272). Thus, the question of the sufficiency of material evidence to support the findings remained unsolved. CR 52(b).

(b) Arguments to Issues: Assignments of Error of No. 2 and 3.

The counsel submitted the document, [proposed] "Order Granting Respondent's Motion for Summary Judgment," did not comply with CR 11(a). By proposing the false, misleading, and insufficient statements of facts before the judge to sign, the Counsel committed a professional misconduct. CR 58(a)(2); RPC 3.1, 3.4 and 8.4.

(c) Arguments to Issues: Assignments of Error of No. 4 and 5.

Since the trial court did not conduct judicial review of facts, RCW 34.05.558; CR 58(a)(1), the court arbitrarily and capriciously adopted the proposed statements of facts and conclusion of law drafted by the counsel. The trial court had no interest to conduct a judicial review of disputed facts (*see* RP 79-102). Such decision was considered abused of discretion and prejudiced, and unconstitutional. *State Ex Rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

G. ARGUMENT TO ADMINISTRATIVE DECISIONS

(1) The arguments pertaining to Issue 1:

(a) The arguments pertaining to Issue 1 set out in the followings:

(i) Sakkarapope's letters dated April 19, May 1, May 4, June 9, June12, and July 24, 2000; October 5, November 6, and December 14, 2000, as well as March 15 and December 7, 2001; July 11, 2003 and February 23, 2003 (CR 164-403, 757-937).

(ii) Summary of Rules and Violations (CR 134-50; Grad. CR 451-67).

(iii) Memorandum in Support of Petitioner's Defense in paragraphs V.A., V.C., V.D., VI.(CP 1129-93).

(iv) Memorandum in Opposing of Memorandum Decision on Motion for Summary Judgment (CP 1215-1239).

(b) The arguments are briefly presented as follow:

(A) A minimum procedural requirement of due process right in regard to academic dismissal. Under the

Fourteenth Amendment of the United States Constitution and in the standard of *Horowitz v. Board of Curators of the University of Missouri*, 538 F.2d 1317 (8th Cir. 1976), the U.S. Supreme Court expressed a minimum procedural due process requirement safeguard against academic misjudgment including an opportunity to be examined by independent examiners in order to be absolutely certain that their academic decision was correct. The Court's opinion does not say that no due process is required, but the institution apparently must afford some minimal protections.

However, the court did not express the exact character of what minimum requirement is when their academic judgments infringe on a student's "liberty" or "property" interest, and it is not yet clear what constitutes such infringements. Apparently, due process also generally requires that the institution's decision making be "careful and deliberate."

The Article I Section 3 and 4 of the State Constitution imposes higher standard of procedural due process requirement upon WSU as prescribed in the APA. (*see* also, CP 964) Pursuant to the WAC 504-04-110, a formal proceeding of Adjudication of Rights and Responsibilities, GSC, is not exempted from a formal proceeding of the APA. Thus the CGSRR was subject to the model rules of procedure, WAC 10-08.

In *Sakkarapope*, the 2000 IIDP preliminary examination in dispute was the only examination he took in fulfillment of the Graduate School's requirement since 1993. Such claims that Sakkarapope were afforded the opportunity more than one time as suggested by Respondent in the agency records and its pleading are false and misleading. The IIDP examination in dispute was never reviewed by any independent scholar in the academic areas of the student's program of study.

DePauw as the department chair bypassed a departmental review to the Graduate School. Hill and the CGSRR do not have any academic expertise in the area of

study. (CR 173-276) The genuine academic claims stated in the Memorandum of Authorities in Support of Respondent's Motion for Summary Judgment (CP 954-1019) are not different from academic jokes and trashes. Such misleading and false claims written by the bad faith counsel shall have no place in the constitutions and academic communities. The material facts of evidence in the agency records do not support such frivolous claims. In fact, Sakkarapope was not procedurally afforded at the minimum standard requirement safeguard against academic misjudgment guaranteed by both constitutions.

(B) The contractual rights of students. The courts recognized the existence of an implied contract between the student and the university with the term prescribed by the university the student to comply, for both academic and disciplinary disputes. Guidance by a counselor constitutes a contract between the student and the college as prescribed him by authorized representatives of the college. *Carr v. St. John's University,* New York, 187 N.E.3d 18(N.Y. 1962); *Healy v. Larsson*, 323 N.Y.S.2d 625, affirmed, 318 N.E.2d 608(N.Y. 1974); *Eden v. Board of Trustees of State University*, 374 N.Y.S.2d 686(N.Y. App. Div. 1975).

The courts' opinions substantially recognized the student-institution contracts and the substantial deviations could constitute a breach of contract. *Paynter v. New York University*, 319 N.Y.S.2d 893 (N.Y. App. Div. 1971); *Zumbrun v. University of Southern California,* 101 Cal. Rptr. 499(Cal. Ct. App. 1972)

In *Sakkarapope*, the agreed content and format of the IIDP prelim exam between the advisory/examination committee and the student in May 1999, the GSC (CP 255-67) and the IIDP Faculty/Student Handbooks (CP 507-29) as well as WAC 504-04 (CP 286-8) constituted an enforceable contract. The refusals to honor such contract made by Duft/advisory committee, the administrators and the Board of Regents constitute a breach of the institution-student contract. Their decisions were capricious and arbitrary and

made in violation of Sakkarapope's student and due process rights guaranteed by the constitutions.

The statements by Kenneth Duft, chair of the IIDP examination committee, in his memorandum dated January 26, May 8, 2000 and Memorandum (no date) responsive to Hill's inquiry dated May 5, 2000 (CP 306; CP PR #02-56 at 9-130; CR PR #02-91 at 24, 29), and the withholding and destroying the examination records, (CP 249), suggest those academic decisions were arbitrary, capricious and made in bad faith. If such decisions were made in good faith, the university has nothing to hide and the examination should have been open to challenge. However, to date, the University has not only refused to release the 2000 IIDP preliminary examination on the portion Sakkarapope received failing grades, but also had abused of judicial process to file a motion to quash the subpoena of education records (CP 560-3, 1047-74, 1090-1, 1039-41), and destroyed the material evidences.

Associate Dean Hill was not authorized to render any academic decision under the GSC (CP 263-4) and the CGSRR operated in violation of Sakkarapope's graduate student right as described in the GSC and due process right. Both Hill's and the CGSRR's decisions (CR 197-222) were capricious and arbitrary, outside of its professional expertise, and unconstitutional. Consequently, Dean DePauw's decisions of October 10, 2000 (CR 181-4), Interim Provost Hopkins' decision of February 1, 2001 (CR 273) and Provost Bates' decision of November 6, 2002 (CR 620-3) were capricious, arbitrary and unconstitutional since they were rendered based on Hill's and the CGSRR's.

Moreover, Sakkarapope did not print thousands of applications for admission and submit them to all universities across the country and chose WSU for his advanced education. Instead, WSU had made use of Sakkarapope in establishing institutional academic cooperation, and was the party who offered financial assistance and arranged the initial admission for him. (CP 97-140). Such arrangement legally

and morally constitutes an enforcement contract. Indeed, the contractual right of Sakkarapope exists under the State and federal constitutions.

(C) Non-binding effect. WSU is constitutionally required to publish rules and procedures before taking into effect. RCW 42.17.250. The facts in the records show that DePauw utilized unpublished rules and policies in rendering the decision of April 26 and 27, 2000 (CR 234-44). The IIDP preliminary examination was conducted outside of the published rules and procedures in the IIDP Faculty/Student Handbook. The CGSRR operated under unpublished rules and procedures. Hopkins utilized unpublished definition of "procedural regularity" and conducted a procedural review under unpublished rules and procedure and refused to provide any explanation and disclose the basis of the decisions (CR 553-61). Such decisions were arbitrary, capricious and unconstitutional. RCW 42.17.250.

(2) The arguments pertaining to Issue No. 2:

(a) The arguments pertaining to Issue No. 2 set out in the followings:

(i) Sakkarapope's letters dated January 5, 7 and February 6, 2003 (CR 318-324, 354-62)

(ii) Memorandum in Support of Petitioner's Defense in paragraphs II.D, V.B. and VI. (CP 1129-93) and Memorandum in Opposing of Memorandum Decision on Motion for Summary Judgment (CP 1215-39).

(b) The arguments are briefly presented as follow:

(A) A dismissal due to a school regulation is subject to a full procedural due process protection. In *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973), the court noted that the situation "does not fit neatly" into either category, "because of disciplinary misconduct" or "solely because of an academic failure," and decided the issues:

> Like the traditional disciplinary case, the determination of whether plaintiff did or did not comply with the school regulations is a question of fact. Most importantly, in determining this factual

> question, reference is not made to a standard of achievement in an esoteric academic field. Scholastic standards are not involved, but rather disputed facts concerning whether plaintiff did or did not comply with certain school regulations. These issues adapt themselves readily to determination by a fair and impartial "due process" hearing [362 F. Supp. at 383].

The dismissal of Sakkarapope from his master program in Statistics based on the claimed policy of six years limit, by its nature, is not academic/ scholastic standard, but whether he did not comply with certain school regulations. The issue itself is readily to be determined by a due process of law. The undisputed facts in the agency records show that Grimes, the University did not afford a due process hearing as required by the constitutions. The dismissal was outside of Grimes' authorities and based on unpublished rules and procedures. The deadline imposed by Grimes was unlawful. Sakkarapope has no obligation to follow. RCW 42.17.250. Indeed, the University has violated Sakkarapope's constitutional rights and deprived of his liberty interest.

(B) Freedom of Speech under the First Amendment of the United States and the State Constitution and University's academic freedom policy. Sakkarapope has freedom of speech under the constitutions and the University's policy of academic freedom (CP 275-8); thus he has a right to choose a topic of his academic research/paper for fulfillment of the program in Statistics, and a right to publish or write what he wants as well as a right to write how many pages of his papers under his academic advisor's supervision. Grimes has no right to impose his own will for his own interest to force and limit Sakkarapope's academic freedom and freedom of speech in violation of the University's policy and constitutional rights, and in retaliation of Sakkarapope. Such decision and action was arbitrary, capricious and unconstitutional.

(C) Premeditated, irresponsible conducts and abuse of discretion. The dismissal of January 31, 2003, was premeditatedly and deliberately committed by Howard Grimes since approximately on or before August 26, 2002 (*see* Grimes' hand written note, "where is he—how did he get there": CR 296). Without notifying the student, Grimes already secretly terminated Sakkarapope from the University's system on 10/22/02 (CR 290). The facts as stated in Paragraph D(5) above and the handwritten note affirmed that the dismissal was arbitrary and premeditated, and not based on academic reason (CR 669). In fact, Grimes had premeditatedly abused of discretion.

The claim that "[t]he University did not review Dr. Grimes' decision at a higher level because he did not request a Graduate Studies Committee Review," (CP 991) is shameful and irresponsible. The statement not only does indicate that the dismissal was arbitrary, not carefully deliberated, but also reaffirms that the University did not afford him a procedural due process and has intentionally violated Sakkarapope's constitutional due process right. Such dismissal was unconstitutional.

Sakkarapope directly made an appeal before Howard Grimes, the Dean of the Graduate School who rendered the dismissal decision, is the secretary of the committee and has control of the committee's meeting agenda, but Grimes provided no response and no further procedural instruction of any administrative remedy of the disputed decision, which is required by the APA. (CR 278-403)

Nothing in the GSPP indicates that a student has to file a direct appeal before the committee; the student is under no duty to discover a procedure which is so required to publish. RCW 42.17.250. In fact, the Graduate Studies Committee may be access through the Dean of the Graduate School, (CR 530-52).

The Dept. of Statistics did not make any recommendation to drop Sakkarapope from the program as prescribed in the GSPP. The Graduate School delegates its

authority "to relieve professors and departments of the details of administration, permitting maximum freedom in decision-making consistent with established policies and with high standards of graduate education." The GSPP are in effect at the time of the students' initial admission and the departmental requirements are in effect at the time the student files a program. (CR 530-52).

Grimes is not a rule making body, but the Dean of the Graduate School who has obligation and duties to comply with the University's policies and procedures. The Grimes' initiative of a new rule based on unpublished regulation and created after Sakkarapope's initial admission for exclusively Sakkarapope was made outside of Grimes' authority and in violation of the University's policy. An application of unpublished distinction between the words is an abused of discretion. *State ex rel. Bartlett v. Pantzer*, 489 P.2d 375 (Mont. 1971). Such dismissal has no effect on Sakkarapope's student status in the program, but constitutes an official misconduct. RCW 9A.80.010.

(3) The arguments pertaining to Issue No. 3:

(a) The arguments pertaining to Issue No. 3 set out in the followings:

(i) Sakkarapope's letters dated September 23, 2002 (CR 637a-639b); March 15 and December 7, 2001, November 10, 2002 and January 22, 2003 (CR 553-655; CR PR)

(ii) Memorandum in Support of Petitioner's Defense in paragraphs II.C, III.C, V.C, and VI. (CP 1129-93).

(b) The arguments are briefly presented as follow:

(A) The SRC has no authority to determine whether the University has complied with FERPA. The duty and authority of the "university's student records committee" as described in WAC 504-21-040 was delegated to the "Registration and Record Committee" which is a legitimate body to hear FERPA issues. The "Student Records Committee" ("SRC") chaired by Richard Backes did not exist at the time Sakkarapope filed a request for a FERPA hearing. The SRC was not properly appointed by an

authorized official to conduct such duties. The SRC is not authorized to make any determination whether the university complies with FERPA, but the FPCO. 34 CFR 99. Such determination of April 5, 2002 was outside of its authority, thus unconstitutional.

(B) Richard Backes has conflict of interest while conducting the hearing of March 27, 2002. As a presiding officer, Backes failed to disclose ex parte communication with DePauw who was the party in the dispute. Backes had a meeting with DePauw on March 5, 2002; thus, he was not eligible to conduct a hearing in compliance with 34 CFR 99(c).

(C) Brief adjudicative proceeding.

(i) Backes conducted the proceeding of March 27, 2002 in violation of RCW 34.05.485. Sakkarapope was the only party at hearing; DePauw who had custody of the records in dispute did not appear at the hearing.

(ii) As a presiding officer, Backes was not authorized to perform any investigative function. In fact, Backes had conducted interviews some university officials and did not disclose the information of such interviews (CR 433-55) Backes violated the provision of RCW 34.05.458.

(iii) Backes conducted the hearing in violation of Sakkarapope's right to have a representation on his behalf, (CR 469, 472). 34 CFR 99.22(d).

(iv) Backes conducted the hearing with unpublished procedures and indicated that the committee had followed the instruction given by the Office of Attorney General. The University invoked an attorney-client privilege to withhold such procedural instruction. While the SRC engaged in improper conducts, the attorney-client privilege was lost. *Osband v. Woodford*, 290 F.3d 1036, 9th Cir. (2002); *Columbia Pictures Television v. Krypton Broadcasting*, 259 F.3d 1186, 9th Cir. (2000). The decision from the unpublished procedure of proceeding was unconstitutional and has no effect on Sakkarapope. RCW 42.17.250.

(v) Provost Bates did not conduct a review of the April 5, 2002 decision in compliance with RCW 34.05.491. No record shows Bates complied with the provision prior to rendering his decision of November 6, 2002. Such decision was arbitrary and unconstitutional.

(4) The arguments pertaining to Issue No. 4.

While bypassing a departmental review, DePauw arbitrarily dismissed Sakkarapope on April 26 and 27, 2000 prior to a formal appeal was filed. Such decision of dismissal was already made in advance prior to any proceeding or administrative review. Such judgment let bias influence the following decisions in the appeal proceeding which has not been held yet. *State Ex Rel. Beam v. Fulwiler*, 76 Wn.2d 313.

The denial access to the Board of Regents on January 24, 2003, clearly shows that the Regents failed to comply with the oaths taken by refraining themselves to impartially perform their official duties. RCW 28B.10.520 The counsel's conduct in Paragraph D(6) reaffirms that the University has intentionally deprived Sakkarapope's constitutional rights.

The University did not either dispose the application for adjudication or commence an adjudicative proceeding. Such ignoring to impartially perform its duty is considered abuse of discretion and negligence, thus, official misconduct. RCW 9A.80.010; RCW 42.20.100

In the letter of July 30, 1991 issued by Patriya Tansuhaj, the University promises a financial and educational support for a candidate selected and admitted to WSU. When Sakkarapope was selected and admitted to the program; such agreement clearly constitutes an enforceable contract between the University and the student. (CP 97-140)

The records of Sakkarapope's history show that the University has treated him like *a homeless dog* on this campus for more than ten years. Starting from the Dept. of Marketing, Tansuhaj and the other faculty members had violated Sakkarapope's constitutional rights under the First,

Fourth and Fourteen Amendments as well as the State constitution. The University has repeatedly violated his student and constitutional rights over these years despite of his professional and peaceful attempts to achieve his advanced education objective. (CP 97-315). This history is indeed not Sakkarapope's sordid history as stated by Duft (CP 306), but the University's. Here, the University has persistently breached the educational contract with the student and deprived his liberty interests.

Now Sakkarapope declares before this court he could take no more and he has seen enough on this campus. This court should not allow the state officials striping their official or representative character to cloak in the constitutions and judicial authorities. *Ex parte Young*, 209 U.S. 123 (1908); *Milliken v. Bradley*, 433 U.S. 267, 289-290 (1977); *Idaho v. Coeur D'Alene Tribe of Idaho,* 117 S. Ct. 2028, 138 L.Ed.2d 438 (1997). Sakkarapope respectfully asks this court to enforce the institutional-student contract and uphold the legal, ethical and moral standards of the State and the United States in all aspects, and set a precedent for better, genuine academic environment for generations to come.

H. CONCLUSION

Appellant respectfully asks this court to review for the reasons, facts and bases, and the issues of laws presented before this court and to grant relieves as indicated in paragraph 8 of the Petition for Review and paragraph F of the Motion for Discretionary Review. Alternatively,

(1) Declare the trail court proceedings are mistrial, unconstitutional; and invalidate all agency decisions affecting Sakkarapope's student status, rights and privileges at WSU, and reinstall those rights and privilege at the agency expenses upon his graduation. In such case, the agency is not able to guarantee and secure his graduation in both degree programs and free from prejudice and retaliation, Appellant asks this court to transfer Sakkarapope to University of Washington or

other state institution offering comparable programs at the expense of the agency.

(2) Award a proper, fair remedy and relief including monetary compensation for damages in personal reputation, physically, psychologically and mentally stressed, as well as opportunity lost in his professional career, including the cost of administrative and judicial litigations as well as an amount of the maximum allowed that the right to inspect or copy said public record was denied.

(3) Order the agency to make proper correction of all misleading and misrepresentation information related to the student on all University's records including a written statement of apology by the agency.

(4) Impose appropriate sanction upon both Respondent and the counsel from committing professional misconduct in the judicial proceedings.

(5) In such case, this court will remand any matter to the trial court for further proceedings, it is requested that the case be transferred to the Superior Court of the State of Washington in Thurston County.

DATED this 23rd of September, 2004.
Respectfully submitted,
s/ B. Sakkarapope
Appellant

No. 227081, 227324 and 228177

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION III

BENJAPON SAKKARAPOPE,
Appellant,

v.

STATE OF WASHINGTON,
THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY,
Respondent.

MOTION FOR RECONSIDERATION AND TO PUBLISH OPINIONS

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I. IDENTITY OF APPELLANT

COMES now, Appellant, Benjapon Sakkarapope, and respectfully submits this motion for reconsideration pursuant to RAP 12.4. Appellant respectfully asks this court to withdraw its affirmation's judgment and opinions in its entirety, and to publish the opinions if not granted as to it is substantially against the precedents. It is further requested that the entire cases be transferred to Division I for a proper review proceeding if a withdrawal of judgment is granted, and grants a request for change of venue to the Spokane Superior Court for further proceedings on remand, as well as grants relieves, costs and compensation as requested.

II. STATEMENTS OF FACT, ERROR AND GROUND FOR RELIEF*

Point #1: "A Show Cause Order Is Optional, Not Mandatory, and Intervention Is Allowed" and "We will not erect technical barriers to deny review on the merits when to do so is contrary to the purpose of the PDA." ***Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane,*** **____Wn.2d____ (August 11, 2005).**

Despite Sakkarapope's objections to the Fact Findings, the trial court not only did not conduct a judicial review to solve the disputed issue of fact, but also entered an order granting Respondent's summary judgment. (CP at 1264-72) The Conclusion of Law #8 indicates that:

> "Mr. Sakkarapope's dispute regarding WSU's responses to his public records requests should be filed pursuant to RCW 42.17.340(1). It is therefore not properly before this Court and should be dismissed without prejudice." (CP at 1263)

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* *See also*, Memorandum Opposing Memorandum Decision on Summary Judgment (CP 1215-39) and Memorandum in Support of Petitioner's Defense (CP at 129-93) for additional authorities and details.

In its Memorandum Decision, the court indicates that:

> As WSU argues, however, an appeal under the APA is a review on the record, whereas an Open Public Records Act dispute is an original action initiated by **an order to show cause.** An Open Public Records Act challenge is based not just on the agency records, but also upon the presentment of new evidence. RCW 34.05.558; RCW 42.17.340(1). Sakkarapope's issues pertaining to his public records requests are therefore not properly before the court, and are subject to summary dismissal without prejudice. (CP at 1211-2) [Emphasis added]

Where an order to show cause is optional, it cannot be used as a basis for dismissal of a PDA claim. The trial court shall not erect a technical barrier to deny review on merits. *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane, Id.* To that effect, the trial court's order of dismissing the PDA's claims based on the ground that Sakkarapope did not properly obtain an order to show cause is obviously invalid and inconsistent with the Supreme Court's Ruling. Sakkarapope is a direct party to the proceeding, not an intervener. Where an intervention is allowed, there is no basis for exclusion of his right to judicial review under the PDA; it is an equal protection under the constitution.

Nonetheless, this court arbitrarily affirmed the trial court's decisions by misleadingly citing its own previous ruling in which it was reversed by the recent Supreme Court's ruling. Appellant respectfully submits that this court unforgivably misapprehended and ignored the Supreme Court's ruling in *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane*, Id. This court is binding by the Supreme Court's precedent. By maintaining the ruling against the Supreme Court's precedent in this regard, it

would suggest that this court intentionally abuses its discretion and violates the impartiality of CJC Cannon 3.

A court abuses its discretion when it makes an error of law. *Koon v. United States*, 518 U.S. 81, 100 (1996). An exercise of discretion that is based on an erroneous interpretation of the law can be freely overturned. *In re Arden*, 176 F.3d 1226, 1228 (9th Cir. 1999). Therefore, Appellant respectfully asks this court to withdraw **its judgment and opinion of September 8, 2005**, in regard to the PDA claim in **its entirety** and enter a ruling **consistent with** *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane*, Id.

Point #2: The Supreme Court Reaffirmed That "A Piecemeal Litigation Is Barred By The Doctrine Of Res Judicata, Or Claim Preclusion." ***Landry v. Luscher*, 95 Wn. App. 779, 783, 976 P.2d 1274 (1999); *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane*, Id.**

Under the APA, Respondent has, in fact, a full opportunity to present new evidences and new issues as authorized by RCW 34.05.554, .558 and .562. The APA does not limit Respondent's right to a full and fair judicial review pursuant to RCW 42.17.340. A review of the PDA matter, by itself, is not a judicial review of the agency decision and action at issue under the APA. However, where the requested records in dispute under the PDA are the same records of "exclusive basis" of the agency decision and action at issue, a full and fair resolution of the agency records will ensure a just in a judicial review of the agency decision and action pursuant to RCW 34.05.510 et seq. The standard reviews of agency records of both statutes can be applied together without affecting a party's right. Thus, the argument that "[a]n Open Public Records Act challenge is based not just on the agency records, but also upon the presentment of new evidence" was without merit.

The dismissal of the PDA claim indeed cut Sakkarapope's one-meal-litigation into a piecemeal litigation. Thus, Sakkarapope's right to judicial review under the PDA after a judicial review under the APA would be subsequently barred by the doctrine of res judicata, or claim preclusion. *Landry v. Luscher*, 95 Wn. App. 779, 783, 976 P.2d 1274 (1999); *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane* (August 11, 2005). Such PDA claim would become moot.

The trial court's order is obviously contradictory to itself since the result of the dismissal is against its own ruling of that is without prejudice to Sakkarapope's right. The dismissal was to preventing a full and fair judicial review pursuant to RCW 34.05.558. Such preclusion of the agency records for review is indeed prejudicial to Sakkarapope's due process right to a judicial review under the APA. The trial court order invalidates itself as it is against a piecemeal litigation policy and violates the right of the party. Therefore, Appellant respectfully asks this court to **withdraw its judgment and opinion in regard to the PDA claim in its entirety and enter a ruling consistent with** *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane*, Id.

Point #3: In *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999), the Court of Appeals, Division II, set a precedent, interpreted the APA and ruled that:

> Appeals from FPAB decisions are governed by the Administrative Procedure Act (APA). RCW 76.09.230(5). Under the APA, the court may grant relief from an agency order if the agency has erroneously interpreted or applied the law. RCW 34.05.570. **The APA <u>does not expressly authorize</u> summary judgments, but case law has established that agencies may employ summary proceedings.** *Eastlake Community Council v. City of Seattle*, 64

> Wn. App. 273, 276, 823 P.2d 1132 (1992). The FPAB's regulations allow for motions for summary judgment in accordance with CR 56. WAC 223-08-148(1). Thus, we must overlay the standard of review prescribed by the APA with the summary judgment standard of viewing disputed facts in the light most favorable to the non-moving party while considering whether the moving party is entitled to judgment as a matter of law **if based on undisputed facts.** Reviewing courts nevertheless give substantial weight and deference to an agency's interpretation of the statutes and regulations it administers, and the agency's interpretation should be upheld if it reflects a plausible construction of the language of the statute and is not contrary to legislative intent. *Seatoma Convalescent Ctr. v. Department of Soc. & Health Servs.*, 82 Wn. App. 495, 518, 919 P.2d 602 (1996), review denied, 130 Wn.2d 1023 (1997). **We review administrative decisions directly, based on the record before the administrative agency.** *Macey v. Department of Employment Sec.*, 110 Wn.2d 308, 311, 752 P.2d 372 (1988); *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999). [Emphasis added].

Counsel Gordon not only concealed the existing case law from the trial court in the summary judgment proceeding, but also intentionally misrepresented the case authority of *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999), when filing the Brief of Respondent before this court, by citing a portion of the authority to mislead the Court of Appeals. (*See* Brief of Respondent ("BOR," at 16-8) Counsel Gordon neglected to include language from the same authority it cites which is less supportive of its position. *Waynne v. Shippenburg Univ. of Pennsylvania,* 639 F. Supp. 76 (M.D. Pa. 1985). Where Sakkarapope amended his brief to clarify this issue, Counsel

Gordon moved to strike it and this court granted its motion regardless of its merit and RAP 1.2.

A civil enforcement proceeding of motion for summary judgment, CR 56, is NOT authorized to be incorporated with the APA. RCW 34.05.590; "The APA does not expressly authorize summary judgments, but case law has established that agencies may employ summary proceedings." *Eastlake Community Council v. City of Seattle,* Id.; *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.,* Id. WSU does not have a statute to allow a summary judgment. RCW 28B.30; WAC 504-04. Despite of Sakkarapope's objection to the proceeding, the trial court abused its discretion to hear the Motion for Summary Judgment where the procedure is not authorized under the provision. *State Ex Rel. Carroll v. Junker,* 79 Wn.2d 12, 26, 482 P.2d 775 (1971). The Respondent's motion for summary judgment should have been dismissed in the first place.

Nothing in the APA may be held to diminish the constitutional rights of any person or to limit or repeal additional requirements imposed by statute or otherwise recognized by law. RCW 34.05.020. The agency, the trial court and this court are not authorized to hold any judgment in a manner that diminishes Sakkarapope's due process rights. Thus, a judicial review of WSU's decisions and actions is required to be set for trial based on the administrative records and transcripts of administrative proceedings. Any conclusion of jurisdictional issue shall be reached in a proper proceeding and after the disputed issues of agency records are settled. The trial court's order violated Sakkarapope's due process right under the APA guaranteed by the fourteenth amendment.

The courts are required to conduct a review in light of the whole record before the court. RCW 34.05.570(3). Such conduct of Counsel Gordon constitutes misrepresentation, fraud and abused the process in the judicial proceedings. **Thus, the finding of facts and conclusions of law arisen from the unauthorized proceeding, misrepresentation**

and fraud of counsel are entirely useless. Such jurisdictional conclusion affirmed by this court in its decision of September 8, 2005, was based on disputed facts and partial records, premature, prejudicial and abused of discretion.

Therefore, Appellant respectfully asks this court to **withdraw its judgment and opinion** in **its entirety** in regard to the lack of jurisdiction in the dismissals of the IIDP and the master program as to its was based on the finding of fact and conclusion of law arisen from an unauthorized proceeding and violation of his due process right. RCW 34.05.020.

Point #4: A Judicial Review Under RCW 34.05 Is On Agency Records.

A judicial review of administrative decisions is directly, based on the record before the administrative agency. *Macey v. Department of Employment Sec.,* 110 Wn.2d 308, 311, 752 P.2d 372 (1988); *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999). The Chapter 34.05 RCW established the exclusive means of judicial review of administrative decision and action in the agency records. A judicial review under this chapter is not on a de novo basis unless to extent that it is expressly authorized by provision of law. RCW 34.05.510, .570, .510 and .590.

A judicial review of facts confined to record is mandatory. RCW 34.05.558. A civil enforcement proceeding in regard to the agency records is expressly authorized by RCW 34.05.590(2). The courts are required to conduct a review in light of the whole record before the court. RCW 34.05.570(3). All requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. RCW 34.05.020.

In the court proceedings, Sakkarapope had made a series of objections to the facts[*]. The disputes of facts and agency records are significantly outstanding. The issues of the agency records for judicial review as stated set forth in the Motion to Review the Trial Court Decisions Regarding Records and Strike Brief of Respondent and Records have merits on ifs face. Additional evidence taken is allowed to solve the dispute issues. RCW 34.05.554, 558 and .562. The disputed issues of facts should be settled before the trial court entered any ruling on merit. Any judgment on jurisdictional conclusion should not be reached where the disputed issues of agency records are outstanding. Instead of solving the disputed issues of facts and agency records as the jurisdiction was transferred from the trial court, this court denied Sakkarapope's due process right as prescribed in RCW 34.05.558 and RAP 9.13.

Appellant respectfully submits that this court misapprehended the APA in having the opinion that "the court did not abuse its discretion in determining Mr. Sakkarapope's subpoenas were unnecessary in light of the limited nature of an APA decision review." This court overlooked the related provisions of RCW 34.05.554, .558 and .562 and an APA decision review is in light of the whole records before the court, not based on the partial records selected by Respondent. RCW 34.05.570(3)(e). This court also overlooked and failed to determine what constitutes an agency record for review. The subjects of the subpoenas are the "exclusive basis" of agency decisions at issues; they are indeed the records for judicial review and cannot be excluded from judicial review under the APA. Such exclusion violated Sakkarapope's due process right.

The interrogatories to the party were to ask the state officials who rendered the decisions to identify which and what certified records the "exclusive basis" of agency

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[*] *See* Motion to Review the Trial Court Decisions Regarding Records.... filed with the Court of Appeals dated July 25, 2005; *see also* CP at 1246-63, 1121-8, 1129-93, 1047-74, 1080-6, 340-486..

decisions made by him/her were. Where the counsel made objections to the interrogatories, the requests for admission were submitted to ask the agency to admit whether the certified records did not contain the "exclusive basis" of agency decisions at issues. Respondent also not only objected to such requests, but failed to make three discoveries.

Where Sakkarapope moved the trial curt to determine the sufficiency of the objection, the trial court did not yet determine the sufficiency of the objections before considering the motion for protective order. The trial court simply entertained Respondent's motion in the absence of Sakkarapope at the hearing of January 16, 2004. Such an ex parte communication violated the impartiality of CJC Cannon 3. *SHERMAN v. STATE*, 128 Wn.2d 164, 905 P.2d 355(1995)(an ex parte communication). *See also*, *State v. Romano*, 34 Wn. App. 567, 569, 662 P.2d 406 (1983); *State v. Cash*, 867 S.W.2d 741, 749 (Tenn. Crim. App. 1993).

Nonetheless, Respondent, the trial court and this court did not demonstrate any practical harmful side effect that would occur from such interrogatories and requests for admission and the reason why those agency records of the "exclusive basis" of agency decisions at issues were unnecessary in light of an APA decision review and how the interrogatories and request for admission create such harmful side effect. In the absence of such practically harmful side effect, the courts abused its discretion.

The trial court not only abused its discretion by quashing the two subpoenas and entering a protective order preventing discoveries, but also refused to perform its duty to conduct a judicial review as required by RCW 34.05.558. The subjects of the subpoenas and discoveries are part of and/or directly related to the agency records for judicial review. Yet, the court has not yet solved the issues of disputed facts as indicated in the order item #6 (CP at 1272) The trial court's orders of January 16, 2004, violated

Sakkarapope's due process rights guaranteed by the fourteenth amendment and RCW 34.05.020.

This court moved further to deny Sakkarapope's objection right under RAP 9.13 by imposing an unpublished rule of this court that "These motions are untimely under the brief schedule in this case, disallowed under the appellate rules, and are otherwise without merit." The RAP 9.13 does not stipulate any time frame when an objection to a trial court decision relating to the record shall be made. The Clerk's letter of March 9, 2004, did not state any time line in this regard. Where a rule and procedure is so required to publish and the court did not publish it, such rule/procedure has no adverse effect on Sakkarapope or any person. RCW 42.17.250(2). Such denial was abused of discretion and unconstitutional.

The case schedule had been delayed by the action of Chief Judge Kato's decision of August 20, 2004. Where Sakkarapope expected a decision on the request for transfer to Division I before this court began its review, this court rushed into a reviewing proceeding. Since the Clerk's letter of July 22, 2005, notifying the cases remained on the previous schedule in this court, the Motion to Review the Trial Court Decision Relating to the Records and Strike Brief of Respondent and Records was reasonably and timely filed July 25, 2005. This court should not put a guilt on the party where the delay was caused by it.

Therefore, Appellant respectfully asks this court to withdraw its judgment and opinion on the lack of jurisdiction since the disputed issues of facts and records are not yet settled and such jurisdictional conclusion was based on disputed facts and partial records, premature, prejudicial and abused of discretion. To the extent, the trial court's orders of January 16, 2004, shall be reversed and remanded for properly further proceedings. The discoveries and subpoenas shall be compelled to force the agency fully transmitted the whole records.

Point #5: A Summary Judgment Proceeding Is Not Appropriate Where genuine Issues of Material Facts Exist. CR 56

At the conclusion of the February 6, 2004, the Court found some genuine issues. The agency either did not fully certify the record pursuant to RCW 34.05.566(1) or fail to prepare or preserve an adequate record. Such conditions are subject to remand a matter to the agency with directions that the agency conducts fact-finding and other proceedings the court considers necessary and that the agency take such further action on the basis thereof as the court directs. RCW 34.05.562(2).

Where the dispute issues of facts have not yet been solved by the court, the ruling on summary judgment was not sufficiently supported by undisputed material facts of evidences. The objection to the court's findings of facts was made. CR 52(b) In the presence of the issues of disputed facts in the instant case, the granting a summary judgment did not meet the standard of CR 56(c); it is not appropriate. CR56. *Ruff v. King County*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995); *Lybbert v. Grant County*, 141 Wn.2d 29.

Therefore, Appellant respectfully asks this court to withdraw its judgment and opinion on the lack of jurisdiction since the disputed issues of facts and records exist and the conclusion of law arisen from the inappropriate proceeding. A jurisdiction conclusion should be determined through a proper proceeding with respect to the whole agency records and Sakkarapope's due process right as guaranteed by the constitutions.

Point #6: The Paragraph 3B Of Petition For Review and Related Issues Of FERPA Were Withdrawn Since March 4, 2004.

The trial court's order that "The Appellant's appeal of the order of November 6, 2002, determining that his

educational record as provided to him under FERPA was accurate and complete is dismissed for lack of subject matter jurisdiction," was made outside of Petition for Review. The jurisdiction over a FERPA complaint is rested within the Secretary of the United States Department of Education and the FPCO is responsible for FERPA compliance, not the state trial court and this court. *Gonzaga University v. Doe*, 536 U.S. 273, 122 S. Ct. 2268, 153 L. Ed. 2d. (2002).

In Kirsten Pauli's letter of July 19, 2002, the agency notified Sakkarapope's right to file a FERPA complaint with the FPCO. (CP PR # 02-84 at 7) On September 27, 2002, a FERPA complaint was properly filed with the FPCO, the U.S. Department of Education. Subsequently, a civil complaint was filed with the U.S. district court, February 24, 2004, after a final decision by the FPCO was made on January 20, 2004. On March 4, 2004, and at the hearing of March 5, 2005, the court was notified of the withdrawal of paragraph 3B and related issues from the Petition for Review. The FERPA issues were off the table. Thus, the state court lost jurisdiction over the Petition for Review on the paragraph 3B and related issues of FERPA. As the result, the Conclusion of Law # 2 and #3 were made in error.

Where the trial court does not have jurisdiction over the subject matter of FERPA, the finding of acts and conclusion of law as well as the order should not be entered as part of the order of March 5, 2004, in the first place. Also, the jurisdiction over the FERPA issues did not transfer to this Court of Appeals. This court lacks of jurisdiction to affirm or enter any opinion in regard to FERPA issues; it should not do so. Therefore, Appellant respectfully asks this court to withdraw its judgment and opinion in regard to FERPA in its entirety, and reverse the trial court's order as to such order in this portion is unconstitutional.

Point #7: The APA Does Not Make Distinction Of Due Process Between Academic And Non-Academic

Dismissals. The Dismissal From The Master Program In Statistics Is Not Academic and It Is Ripe For Review.

In the Memorandum in Support of Respondents' Motion for Summary judgment on page 11, Respondent conceded that:

> The APA governs all judicial review of agency orders and actions unless the action is expressly excluded by the Act. RCW 34.05.010 and RCW 34.05.030. Academic dismissals are not excluded and the APA is the sole mechanism for Mr. Sakkarapope to file his appeals of his academic dismissals. (CP at 1215)

Despite whether a dismissal is academic, a student is fully protected and guaranteed due process right under the APA, RCW 34.05. The APA is fully governed both dismissals from the IIDP and the master program. An adjudicative proceeding in compliance with the APA is due process to which the agency shall afford. "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (CP at 991) Nonetheless, the trial court's order that "The Respondents' action of January 28, 2003, dismissing Mr. Sakkarapope from his Master of Sciences in Statistics program on academic grounds is affirmed," was outside of the scope of Petition for Review and violated Sakkarapope's due process right.

The Conclusion of Law # 5, #6 and #7 were made in error, not supported by the facts in the records, and outside of Sakkarapope's Petition for Review. **Nothing in the petition asked the court to review any academic matter.** (*See* Petition for Review, "PFR," at 19; CP at 19) No records support that Mr. Sakkarapope received unsatisfactory annual evaluation of progress toward program completion, but a satisfactory result of making normal progress toward the degree completion in the last annual evaluation in spring 2002 semester.

In *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973), the court noted that the situation "does not fit neatly" into either category, "because of disciplinary misconduct" or "solely because of an academic failure," and decided the issues:

> Like the traditional disciplinary case, the determination of whether plaintiff did or did not comply with the school regulations is a question of fact. Most importantly, in determining this factual question, reference is not made to a standard of achievement in an esoteric academic field. Scholastic standards are not involved, but rather disputed facts concerning whether plaintiff did or did not comply with certain school regulations. These issues adapt themselves readily to determination by a fair and impartial "due process" hearing [362 F. Supp. at 383]. Id.

Indeed, WSU's decision dismissing Mr. Sakkarapope from his M.S. program was NOT on academic grounds, but a dispute of whether Sakkarapope failed to complete his program within 6 years. *See* CR 669. Moreover, Howard Grimes as dean is NOT authorized to make any academic decision of dropping a student from his program of study, but a student's academic advisor and department. (*See* GSPP at 17; CR 550; Attachment 2) Such dispute is readily for a full due process of law. The fact is that no evidence in the certified records indicates whether the agency conducted any hearing before or after such dismissal made effective. The requirements of due process of law were not met. *Shirley Bowing v. Board of Trustee of Green River Community College,* 85 Wn.2d 300. Thus, such dismissal was arbitrary and capricious. Sakkarapope's due process right has been deprived.

Where the agency is so required to afford an adjudicative proceeding, an application for such proceeding was filed with the Board of Regents on February 23, 2003,

after exhausting of the ignoring of the administrative offices. The Board did not either commence or dispose of the application as prescribed by RCW 34.05.413, .416 and .419. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon. *Dept. of Ecology v. Kirkland,* Id. The agency still owes Sakkarapope a due process of law. Where such right exist and has yet been fulfilled, it cannot be said that the agency's decision was final in compliance with the APA and that the statute of limitation was to run.

Appellant respectfully submits that this court erroneously affirmed the trial decision in regard to the dismissal from the master program based on the lack of jurisdiction, which is a different position from the trial court and Respondent—based on academic ground, NOT untimely appeal. This court overlooked and misapprehended the issue before the court Respondent already conceded in the footnote of Memorandum in Support of Respondents' Motion for Summary Judgment on page 38 that:

> However, since the University did not expressly notify Mr. Sakkarapope that his "his appeal" was misdirected, **WSU does not argue this appeal is untimely**. Mr. Sakkarapope concedes in his Petition that any further review is "deemed denied." (PFR at line 5-9) He also contends he has "exhausted his adminstrative remedies" and although WSU does not concede subject matter jurisdiction on the issues surrounding his IIDP and his FERPA review, WSU agrees that he has exhausted his administra5tive remedies since the GSPP does not require he have the matter reviewed by a Graduate Studies Committee. Thus, **this matter is ripe for review by the Court**. (CP at 991) [Emphasis added]

In the IIDP dismissal, the agency took a position that the decision of February 1, 2001, made by the Interim

Provost was final. The agency did not consider the decision of October 10, 2000, made by Dean of the Graduate School, Karen DePauw, as a final order. (CR 164-92) The trial court and this court adopted Respondent's position of using the decision made by the Provost as a final agency decision in compliance with the APA. Here, in the dismissal of the master program in statistics, the courts adopted the decision of January 31, 2003, made by Howard Grimes, Dean of the Graduate School, as a final agency decision. This is an inconsistent and double-standard application and interpretation of rules and the statute. This is a case of the same school/agency and the same student as well as under the same APA and the constitutions. This court rendered its judgment and opinion without articulating the rationale of how the APA can be selectively applied in such manner. The courts simply adopted Respondent's flip-flopped arguments and misleading facts and misapprehended of the laws. Such selective application and interpretation is a clear abuse of discretion.

Therefore, Appellant respectfully asks this court to withdraw its judgment and opinion of September 8, 2005, in its entirety in regard to the dismissal from the master program because the court has jurisdiction. It is further requested this court reverse the trial court's order as to such order was made outside of the subject matter for review and violated Sakkarapope's due process right to judicial review under the APA. The dismissal from the master program in statistics has not yet been decided by the Provost and thus it is not yet final based on the same standard this court adopted in the IIDP dismissal. Thus, the statute of limitation was not yet to run.

The issue, in fact, is not whether the court lacks jurisdiction, but whether the decision of dismissal from the master program is ripe for review. A decision "ripe for review" and fully qualifying it as a "final decision" under RCW 34.04.130. *Dept. of Ecology v. Kirkland 84*, Wn2.d 25, 523 P.2d 1181. Where Respondent already conceded that it is

ripe for review, this court indeed has jurisdiction over the dismissal from the master program. The court's judgment and opinions in this regard should be withdrawn.

Point #8: A Jurisdictional Question Is Reviewed De Novo.

The question whether the courts lack jurisdiction is reviewed de novo and demanded the court inquires into the following factors:

(1) Due Process of Law. Due process of law is defined in *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968). The constitutional elements of procedural due process, and thus of a fair hearing, are: notice; an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case; an opportunity to know the claims of opposing parties and to meet them; and a reasonable time for preparation of one's case. A "competent tribunal" may very well be an administrative officer or body, as well as a court. *Lloyd Sabaudo Societa Anonima Per Azioni v. Elting*, 287 U.S. 329, 77 L. Ed. 341, 53 S. Ct. 167 (1932). *Id.*

When required by law or constitutional right, and upon the timely application of any person, an agency shall commence an adjudicative proceeding. RCW 34.05.413(2). If an agency is required to hold an adjudicative proceeding, an application for an agency to enter an order includes an application for the agency to conduct appropriate adjudicative proceedings, whether or not the applicant expressly requests those proceedings. RCW 34.05.413(4).

The provisions of Washington State University and the rules adopted by the University under the APA, concerning such administrative remedy and resolution, provides that Sakkarapope is entitled to a hearing upon the charges giving rise to his dismissal. Implicit in such provisions is that such a hearing shall be fair and impartial, and before an unbiased tribunal. Such protections are inherent in the word "hearing" and without them hearing

procedures could be seriously infected. *Interstate Cornmerce Comm'n v. Louisville & Nashville R.R.*, 227 U.S. 88, 57 L. Ed. 431, 33 S. Ct. 185 (1913). These protections, and the concepts of fundamental fairness they project, are inherent in the notions of **"administrative due process"** and have been recognized by the court as late as *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969); *State Ex Rel. Beam v. Fulwiler*, 76 Wn.2d 316.

The demands of due process do not require a hearing, at the initial stage or at any particular point or at more than one point in an administrative proceeding **so long as the requisite hearing is held before the final order becomes effective.** The right to procedural due process in administrative hearings establishes the principle that a person may not be deprived of a protected right unless he is first given notice and an opportunity to be heard. *Shirley Bowing v. Board of Trustee of Green River Community College,* 85 Wn.2d 300.

WSU adopted model rules of procedure adopted by the office of administrative hearings, WAC 10-08, in compliance with the APA. WAC 504-04-110. Nonetheless, the University did not afford any adjudicative proceeding in regard to the dismissals from the IIDP and M.S. program in compliance with WAC 10-08, including within the so-called "adjudication of rights and responsibilities" of the Graduate Student Code." (CP at 255-65) The agency's records has clearly shown constitutional flaw in the "**administrative process**." "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (CP at 991) None of the WSU's decisions and actions came from **"an administrative process"** required by the APA and the fourteenth amendment; none of the proceedings the University afforded Sakkarapope, if any, met the definition of due process as defined in *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968). No notice of hearing was issued in regard to the dismissals. Thus, Sakkarapope's

due process right has been deprived. Where the agency has not yet afforded a due process hearing which is so required before such decision made effective, the decisions of February 1, 2001 and January 31, 2003, shall not be final until the agency shall have acted thereon. *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181.

(2) Finality of Agency Order or Action.

Appellant respectfully submits that this court misapprehended the meaning of "finality" for the purpose of the APA as the Court of Appeals, Division II, stated in *LEWIS COUNTY v. PERC*, 31 Wn. App. 853, 644 P.2d 1231 (1982), and ignored the precedents set by the Supreme Court. The court in *LEWIS COUNTY v. PERC* originally stated:

> The Union's argument essentially is that the certification decision (Decision No. 368) was a final agency order, and that the County in 1978 should have sought judicial review under RCW 34.04.130. An administrative decision is "final" for purposes of judicial review under RCW 34.04.130(1) when it denies a right, imposes an obligation, or fixes a legal relationship between the parties. *RENTON EDUC. ASS'N v. STATE PUB. EMPLOYMENT RELATIONS COMM'N,* 24 Wn. App. 476, 603 P.2d 1271 (1979), REVIEW DENIED, 93 Wn.2d 1025 (1980); *DEPARTMENT OF ECOLOGY v. KIRKLAND*, 84 Wn.2d 25, 523 P.2d 1181 (1974). **An administrative determination is not a final order where it is a mere preliminary step in the administrative process, but it becomes final when a legal relationship is subsequently fixed upon "consummation of the administrative process"**, *DEPARTMENT OF ECOLOGY v. KIRKLAND,* 84 Wn.2d at 30, citing *CHICAGO & S. AIR LINES, INC. v. WATERMAN S.S. CORP.*, 333 U.S. 103, 113, 92 L. Ed. 568, 68 S. Ct. 431 (1948). *LEWIS COUNTY v. PERC*, 31 Wn. App. 853, 644 P.2d 1231 (1982). [Emphasis added]

The court overlooked that a final order must come from a **"consummation of the administrative process." <u>The label affixed to the action by the administrative agency is NOT determinative of its finality.</u>** Such a letter must be so written as to be clearly understandable as a final determination of rights. However, doubts as to the finality of such communications must be resolved in favor of the citizen. *Valley View v. Redmond*, 107 Wn.2d 621, 733 P.2d 182. Whether or not the statutory requirements of finality are satisfied in any given case depends NOT upon the label affixed to its action by the administrative agency, but rather upon a realistic appraisal of the consequences of such action. *Isbrandtsen Co. v. United States*, 211 F.2d 51, 55 (D.C. Cir. 1954); *Dept. of Ecology v. Kirkland,* 84 Wn2.d 25, 523 P.2d 1181. In *LEE v. JACOBS,* 81 Wn.2d 937, 506 P.2d 308 (1973), the court stated:

> "That is nonsense. If every letter from every agency of state government which arrives on a lawyer's desk must be scrutinized to determine if it contains an appealable order, indeed a burden of considerable magnitude will have been created by fiction. *LEE*, at 940-41; *Valley View v. Redmond,* Id.

In *Hayes v. City of Seattle,* 131 Wn.2d 706, 934 P.2d 1179, the court stated:

> While the Council's action would have been final if [he] had done nothing further. [He] continued to seek the Council's approval of his application... **Because of his continued efforts, it cannot be said that [he] had exhausted his administrative remedies at the time of the council's initial action. A final action ...did not occur until the council ultimately approved his application.** If the court adopted the position..., would, in order to avoid a potential bar of the statute or limitations, be forced to bring an action for damages before final action on their application

had been taken by the administrative agency. That makes no sense because it would force applicants ...to file an action for damages before their cause of action was ripe. *Hayes v. City of Seattle,* 131 Wn.2d 706, 934 P.2d 1179 [Emphasis added]

In the Faculty Manual on page 6, the agency provides an opportunity to individuals to submit **"a direct appeal"** before the Board of Regent. (*See* Attachment 1) This is also an administrative remedy available within the agency authority one can seek administrative relief. Where the agency's rules provide a procedure for rehearing or reconsideration, and that procedure has been invoked, the agency decision shall not be final until the agency shall have acted thereon. *Dept. of Ecology v. Kirkland,* Id. What is sometimes called the "final order doctrine" prevents review of an order which is not final under a statutory provision for review of an "order." *Federal Power Comm'n v. Metropolitan Edison Co.,* 304 U.S. 375, 82 L. Ed. 1408, 58 S. Ct. 963 (1938).

The statement issued by the chairman of the board constitutes a "final action" by the board since by the operation of law the action...in granting the permit stands affirmed." *Dept. of Ecology v. Kirkland,* Id. Where the Board of Regents has solely and ultimately power within the agency, a decision by the Board of Regents constitutes a final action of the agency, not the statements made by Provosts or deans or janitor. A verbal decision preventing access to the Board of Regents does not constitute a final decision of the Board of Regents; a Regent is not the Board of Regents.

The decisions of February 1, 2001 made by Interim Provost Hopkins and of November 6, 2002 made by Provost Bates, of November 25, December 18, 2002 and January 31, 2003 made by Howard Grimes were not constituted a final decision by the agency. *Hayes v. City of Seattle,* 131 Wn.2d 706, 934 P.2d 1179. These letters did not come from any consummation of administrative proceedings in compliance

with the APA, RCW 28B.30 and WAC 504-04; thus, it does not meet the meaning of "administrative process." Where an application for adjudicative proceeding was filed February 23, 2003, these officials' decisions are not final agency's decision until the Board of Regents has acted upon as prescribed in RCW 34.05.419.

Where the agency has not yet transmitted the agency records of the "exclusive basis" of the decisions of February 1, 2001 made by Interim Provost Hopkins and of November 6, 2002 made by Provost Bates, of November 25, December 18, 2002 and January 31, 2003 made by Howard Grimes, how would the trial court and this court reach to a conclusion that the decisions of February 1, 2001, November 6, 2002, and January 31, 2003, came from a **"consummation of the administrative process"** in the meaning of the APA unless abuse of discretion, prejudice and violation of impartiality? Therefore, this court's opinion that the WSU's actions were final on February 1, 2001, November 6, 2002, and January 31, 2003, was premature and made without supporting records of any **"consummation of the administrative process,"** and would be wrong view of law; then it should be withdrawn.

(3) Requirements of "Entry of Order." The APA stipulates an agency order must comply with the requirements set forth in RCW 34.05.461. A **"consummation of the administrative process"** includes a review proceeding set forth in RCW 34.05.464 and .470. The trial court and this court reached to a conclusion that the decisions of February 1, 2001, November 6, 2002, and January 31, 2003, were final without determining whether these decisions were qualified as an agency order as required by RCW 34.05.461. Obviously, the letters of February 1, 2001 and January 31, 2003, did not meet the requirements of an entry of order. Respondent already conceded that it did not properly notify Sakkarapope in regard to the January 31, 2003, decision. (*See* Point #7) Where a letter made by an official does not meet the requirements of an entry of order

from a **"consummation of the administrative process,"** it cannot be said such statement constitutes a final agency action/order in compliance with the APA. Otherwise, a letter made by a janitor can be considered as an agency final action/order if his/her bosses ignores an appeal of an aggrieved person. Such interpretation should not be part of the APA. Thus, such conclusion of law was misapprehended and should be withdrawn.

(4) Exhaustion of Administrative Remedies. The doctrine of exhaustion of administrative remedies was formulated to absolve the courts of this difficult task. The Supreme Court has consistently held that when an adequate administrative remedy is provided by statute, it must be exhausted before the courts will intervene. *State ex rel. Association of Wash. Indus. v. Johnson*, 56 Wn.2d 407, 353 P.2d 881 (1960); *Sunny Brook Farms v. Omdahl*, 42 Wn.2d 788, 259 P.2d 383 (1953). This requirement applies regardless of the type of court intervention sought, including petitions for writs of certiorari and mandamus. *State Ex Rel. Beam v. Fulwiler*, 76 Wn.2d 313.

Like in *State Ex Rel. Beam v. Fulwiler*, the decision made by the city manager is appealable before the commission of the city. The Board of Regents is a governing-body of the University and has full power delegated by the State Constitution. The Board of Regents constitutes the last appellate tribunal. RCW 28B.30.150(1). The University administrative function was delegated through the chain of command, University President. In the Faculty Manual on page 6, the agency provides an opportunity to individuals to make **"a direct appeal"** before the Board of Regent. (*See* Attachment 1) This is an administrative remedy available within the agency authority one can seek administrative relief. Indeed, a decision made by a University official is appealable before the Board of Regents.

WSU is required to afford due process prior to or after such dismissals. Where an application for adjudicative

proceeding pursuant to the APA was filed February 23, 2003, the Board of Regents has 90 days to take action either commencing an adjudicative proceeding as adopted in WAC 504-04-110 or disposing such application as prescribed by RCW 34.05.410 et seq. The Board had ignored Sakkarapope's rights of petition and due process of law under Article I section 3 and 4. Thus, it cannot be said the decisions of February 1, 2001, November 6, 2002, and January 31, 2003, came from a "consummation of the administrative process" and were final until the Board shall have acted thereon. *Dept. of Ecology v. Kirkland,* Id.

The facts are that Sakkarapope continued his enrollment at WSU until the action of January 31, 2003, was taken and that he persistently and continuously pursued his due process right. Thus, it cannot be said that he had exhausted his administrative remedies at the time of Hopkins' and Grimes' initial actions. A final action does not occur until the Board of Regents ultimately acts upon his application for adjudicative proceeding. *Hayes v. City of Seattle,* 131 Wn.2d 706, 934 P.2d 1179. Therefore, the Petition for Review was timely filed with the Superior Court on July 23, 2003, and the decisions are ripe for review by the courts.

(5) Statute of Limitation. The statute of limitation is tolled under a certain condition. RCW 34.05.542(3). The statute of limitation is tolled during the period of seeking administrative remedies available. The statute of limitation will run after **the end of thirty days of the last administrative remedy sought** RCW 34.05.534. Thus, where the Board of Regents has duty in compliance with the APA, but did not either commence an adjudicative proceeding or dispose the application for adjudication pursuant to RCW 34.05.413, the statute of limitation was not to run since no final decision was made by the Board, not by a Regent's informal verbal conversation where the Board was not in session.

After the end of 90 day period since the application for an adjudicative proceeding was filed February 23, 2003 pursuant to RCW 34.05, a request for the last reconsideration of the Board of Regents not taking any action, Sakkarapope believed nothing left he could seek further relief and then the Petition for Review was timely filed with the Superior Court on July 23, 2003. Thus, Sakkarapope fulfilled the requirement of exhaustion remedies pursuant to RCW 34.05.534 and timely filed a petition for review. The agency's decisions are ripe for review. The courts did not lose jurisdiction to review the agency decisions under the APA. Therefore, the court's judgment and opinion of September 8, 2005, should be withdrawn.

Point #9: Double-Standard Application and Interpretation of Laws.

(1) On one hand, where RAP 17.2 stipulates that a motion to modify commissioner ruling be decided judges—a panel of the court, this court allowed Judge Kato to entertain such motion by himself and ignored Sakkarapope's motions. Then, this court misrepresented the issue before it and unfairly mischaracterized Sakkarapope's action that he dissatisfied the administrative rulings and then denied a transfer. The issue is not whether Sakkarapope dissatisfied with the administrative ruling, but whether Judge Kato has authority to entertain such motion by himself. Yet, this court has not provided any answer to that simple legal question. This is the matter of Sakkarapope's due process right. The ground for transfer was that the judges of this court violate his due process right and the impartiality of CJC Cannon 3, not his dissatisfaction of the administrative rulings. The court misrepresented the case.

On the other hand, this court granted Respondent's motion to strike his three-page amended brief by strictly imposing an unpublished rule of the court where the issue in the amended brief is central to the merit of the case despite the spirit of the just. RAP 1.2.

(2) Where Counsel Gordon concealed the case authority of *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999), this court not only ignored it, but also partially cited the case authority of *LEWIS COUNTY v. PERC*, 31 Wn. App. 853, 644 P.2d 1231 (1982) in the same manner.

With inclusion of the points raised above, a question of abuse of discretion and violation of the impartiality of CJC Cannon 3 is to call for this court attention. Where there is doubt, a withdrawal of the September 8, 2005, judgment and opinion and a transfer of the cases to the Court of Appeals, Division I, for a proper, impartial proceeding are necessary.

III. CONCLUSION

Based on the facts and existing authorities, whether the court lacks jurisdiction is not the issue, but whether the agency's decisions are ripe for judicial review. Appellant respectfully asks this court to withdraw its judgment and opinions entered September 8, 2005, in its entirety and transfer the cases for a proper proceeding in the Division I. If not granted the affirmation's judgment and opinions should be published as to it is substantially against the precedents.

DATED this 27th day of September, 2005

s/ B. Sakkarapope

Appellant

No. 227081, 227324 and 228177

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

BENJAPON SAKKARAPOPE,
Appellant,

v.

STATE OF WASHINGTON,
THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY,
Respondent.

(SECOND) MOTION FOR RECONSIDERATION AND TO PUBLISH OPINIONS, AND MOTION FOR CONSOLIDATION

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I. IDENTITY OF APPELLANT

Pursuant to RAP 12.4(h), Appellant, Benjapon Sakkarapope, respectfully submits this (second) motion for reconsideration, and asks this court to withdraw its judgment and opinions in its entirety, and to publish the opinions if not granted as to it is substantially against the precedents and the party's interest.

II. MOTION FOR CONSOLIDATION

On January 17, 2006, Appellant submitted a MOTION FOR REVIEW A TRIAL COURT'S POST-JUDGMENT DECISION before this court for review the trial court's post-judgment decision entered January 6, 2006. While the case is pending review by this court on motion for reconsideration, it would be appropriate both motions be reviewed together because the issues presented therein are directly related. Therefore, Appellant respectfully asks this court to consolidate them for review together to secure the just and be efficient.

III. STATEMENTS OF FACT, ERROR AND GROUND FOR RELIEF

Point #1: The APA Supersedes the PDA and the Civil Enforcement Proceeding is Expressly Authorized.

In *Spokane Research & Defense Fund; Tim Connor, et at., v. City of Spokane,* 155 Wn.2d 89, 94-95, 117 P.3d 1117(2005), the Supreme Court indicates:

> **All of these proceedings are statutorily defined, whereas actions under the PDA are not.** The statute simply does not define a special proceeding exclusive of all others. **When a statute is silent on a particular issue, the civil rules govern the procedure.** *King County Water Dist. v. City of*

> *Renton*, 88 Wn. App. 214, 227, 944 P.2d 1067 (1997). Thus, normal civil procedures are an appropriate method to prosecute a claim under the liberally construed PDA. In the past, we have heard PDA cases that did not involve show cause orders. See, e.g., *CLEAN v. City of Spokane*, 133 Wn.2d 455, 947 P.2d 1169 (1997) (declaratory and injunctive relief sought); *Amren v. City of Kalama*, 131 Wn.2d 25, 29-30, 929 P.2d 389 (1997) (writ ofmandamus to compel disclosure under the PDA, fees and penalties awarded to plaintiff). [Emphasis added]

This court overlooked and misapprehended the APA. Where the PDA is silent and where the APA is authorized a civil enforcement proceeding within it under RCW 34.05.590(2)*, the APA supersedes the PDA and it is, **indeed, sufficient** to claim relief under the Civil Rules. The records at issues subject to the PDA are the same records of the agency "exclusive bases" for judicial review under RCW 34.05.566. Where the APA expressly authorizes the civil enforcement proceeding to deal with the agency records, this court absolutely has no authority to modify the statue of the APA excluding the civil enforcement proceeding under RCW 34.05.590(2). Such modification or interpretation is unconstitutional as to it is violating Sakkarapope's due process right guaranteed by the constitutions. This court should not legislate from the bench.

Appellant respectfully submits that the term, "tardy motion," is misrepresented and unfair. Sakkarapope has a correct interpretation of the PDA and APA proceedings in the first place and then he did not obtain an order to show cause.

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* RCW 34.05.590 Incorporation of other judicial review provisions. Proceedings for civil enforcement are governed by the following provisions of this chapter on judicial review, as modified where necessary to adapt them to those proceedings: (1) RCW 34.05.510(2) (ancillary procedural matters); and (2) RCW 34.05.566 (agency record for judicial review).

Where Respondent misapprehended the proceeding and moved to the trial court on the basis of an order to show cause, the motion to show cause was filed as a counterclaim against such Respondent's fraud claim as to Sakkarapope has a right under the PDA, but the agency has duty to show cause. The burden is on the agency. The trial court and this court should not strip away such right.

A denial of review based on an order to show cause is proven meritless by the Supreme Court's recent ruling. Such denial constitutes a creation of a technical barrier preventing review in consistent with the PDA; it is also consistent with the Supreme Court's opinion: "We will not erect technical barriers to deny review on the merits when to do so is contrary to the purpose of the PDA." Id. The trial court and this court should not erect a technical barrier to deny review on merits. Sakkarapope is a direct party to the proceeding, not an intervener. Where an intervention is allowed, there is no basis for exclusion of his right to judicial review under the PDA and APA.

Under the APA, Respondent has, in fact, a full opportunity to present new evidences and new issues as authorized by RCW 34.05.554, .558 and .562. The APA does not limit Respondent's right to a full and fair judicial review pursuant to RCW 42.17.340. A review of the PDA matter, by itself, is not a judicial review of the agency decision and action at issue under the APA. However, where the requested records in dispute under the PDA are the same records of "exclusive basis" of the agency decision and action at issue, a full and fair resolution of the agency records will ensure a just in a judicial review of the agency decision and action pursuant to RCW 34.05.510 et seq. The standard reviews of agency records of both statutes can be applied together without affecting a party's right.

Therefore, Appellant respectfully asks this court to withdraw its judgment and opinion in regard to the PDA claim in its entirety and enter a ruling consistent with the

APA, PDA and *Spokane Research & Defense Fund, v. City of Spokane*, Id.

Point #2: the Party's Interest to Publish Opinions

The fact is that Respondent obtained the trial court of March 5, 2004, through a summary judgment proceeding, an unauthorized proceeding, *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999), and then submitted that trial order as an evidence against Sakkarapope in the removal proceeding in the Immigration Court and in a summary judgment proceeding in the United States District Court. Both cases have been pending for review in the United States Court of Appeals for the Ninth Circuit, Cases No. 05-75413 and 04-35643, respectively.

The decision of this court in the instant case is directly related to the two pending cases. Sakkarapope is a party of interest in the court's opinion to be cited as part of the other pending review cases. Also, in the case No. 04-35643, the Board of Regents of Washington State University is a party to the proceeding. The court's opinion in this instant case should bind equally both parties in all other proceedings including in the other courts of jurisdiction. The request to publish opinion meets the standard set forth in RAP 12.3(e). Therefore, Appellant respectfully asks this court to publish the opinions in its entirety.

Point #3: Abuse of Discretion and Violation of the Impartiality of CJC Canon 3

With inclusion of the issues and facts of laws presented before this court so far, Appellant respectfully submits that the trial court judge and the judges of this court abused discretion and violated the impartiality of CJC Cannon 3. A court abuses its discretion when it makes an error of law. *Koon v. United States*, 518 U.S. 81, 100 (1996). An exercise of discretion that is based on an erroneous interpretation of the law can be freely overturned. *In re Arden*, 176 F.3d 1226, 1228 (9th Cir. 1999).

Without stating details as to it is obvious on its face, Appellant respectfully asks if any judges on the reviewing panel and Judge Kato meet a disqualification by the terms of CJC Canon 3, such judge should disqualify himself as required, or submit a remittal of disqualification. Such disqualification should not be an issue in any subsequent proceeding.

Where there is doubt, Appellant respectfully asks this court to maintain the judicial standard of this State and the impartiality. A withdrawal of the September 8, 2005, and January 5, 2006, judgments and opinions and a transfer of the cases to the Court of Appeals, Division I, for a proper, impartial proceeding as well as a disqualification of judge are necessary.

IV. CONCLUSION

Based on the facts and existing authorities, Appellant respectfully asks this court to withdraw its judgments and opinions entered September 8, 2005, and January 5, 2006, in its entirety and the opinions should be published as to it is substantially contradictory to the existing precedents and the party's interest to cite in the other related cases pending review in the United States Court of Appeals for the Ninth Circuit. It is also requested this court consolidate the two motions to review together.

It is RENEWED the request that the entire cases be transferred to Division I for a proper review proceeding if a withdrawal of judgment is granted, and grants a request for change of venue to the Spokane Superior Court for further proceedings on remand, as well as grants relieves, costs and compensation as requested.

DATED this 21st day of January, 2006

s/ B. Sakkarapope
Appellant

No. 78334-9

THE SUPREME COURT OF THE STATE OF WASHINGTON

Supreme Court Cause No. 76027-6
Court of Appeals, Division III, No. 227081, 227324 and 228177
Whitman County Superior Court No. 03-2-00168-4

BENJAPON SAKKARAPOPE,
Petitioner,

v.

STATE OF WASHINGTON,
THE BOARD OF REGENTS,
WASHINGTON STATE UNIVERSITY,
Respondent.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Pursuant to RAP 13.4, Petitioner, Benjapon Sakkarapope, respectfully submits this Petition for Review the decisions of the Court of Appeals, Division III, as indicated in Section II below.

II. DECISIONS

1. The decisions of the Court of Appeals terminating review filed September 8, 2005, January 5 and February 2, 2006. (Appendix ("App.") A and B)
2. The Court of Appeals' decision terminating review of stay filed August 20, 2004. The subsequent denial by the Supreme filed February 1, 2005. (Case No. 76027-6) (App. C thru G)
3. The Court of Appeals' decision to consolidate the proceedings on recall and transfer (May 2, 2005). (App. H)

III. ISSUES PRESENTED FOR REVIEW

No. 1: Whether the Court of Appeals' decision affirming the dismissal of Sakkarapope's Public Records Disclosure Act ("PDA") claim:

> (i) Is inconsistent with *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 94-95, 117 P.3d 1117 (2005) and the purpose of the PDA; and
>
> (ii) Has deprived Sakkarapope's due process right under the Administrative Procedure Act ("APA") and the PDA.

No. 2: Whether a summary judgment proceeding is NOT authorized under the APA, whether WSU is estopped from inserting an untimely petition for review, and whether the Court of Appeals' decision:

(i) Is unconstitutional and inconsistent with the decisions of the Court of Appeals, Division I, in *Alpine Lakes Prot. Soc'y v. Dept of Natural Res.*, 102 Wn. App.1, 14 (1999) and *Rust v. WWSC*, 11 Wn. App. 410 (1974);

(ii) Is an uneven application of a final decision which is from consummation of the administrative process set forth in *Lewis County v. PERC*, 31 Wn. App. 853, 644 P.2d 1231(1982); and

(iii) Ignored the doctrines of exhaustion of administrative remedies and ripeness and, i.e., *State ex rel. Assoc. of Wash. Indus. v. Johnson*, 56 Wn.2d 407, 353 P.2d 881(1960); RCW 34.05.534.

Otherwise, whether the provisions of RCW 34.05.542(2) and (3) are unconstitutional as in violation of the equal protection clause.

No. 3: Whether Sakkarapope's due process right and liberty interests under the Fourteenth Amendment and the State Constitution Article I Section 3 and 4 have been deprived by the Board of Regents, officials, Washington State University ("WSU"), not affording him a hearing prior to the dismissals from the IIDP and the master program made effective.

No. 4: Whether Respondent does not have standing and a right to quash Sakkarapope's educational records.

No. 5: Whether the trial court's protective order and order quashing Sakkarapope's subpoenas (January 16, 2004), and the Court of Appeals' denying the objection to the decision relating to records under RAP 9.13 and striking the amended brief, deprived Sakkarapope's due process right.

No. 6: Whether Sakkarapope's affidavit of prejudice has full effect and the trial court judge is prohibited to hear the summary judgment proceeding of February 6, 2004, and whether the judge violates RCW 4.12.040.

No. 7: Whether Sakkarapope's due process right and right to a review of stay of the agency's decisions have been deprived. RCW 34.05.550.

No.8: Whether the lower courts erred in the inclusion of the dismissal of FERPA claim because of Sakkarapope' s supplemental jurisdiction request in the United States District Court.

No. 9: Whether the lower court's judges abused its discretion and violated the impartiality of the Code of Judicial Conduct Cannon 3, and the judges are disqualified and a change of venue/transfer are necessary to secure the just and the party's due process right and whether Counsel Sheryl Gordon has violated the Rules of Professional Conduct, RPC 3.1, 3.4 and 8.4 prejudicial to the opposing party and is disqualified.

IV. STATEMENT OF THE CASE*

1. Sakkarapope is NOT a regular student since his admission and financial assistance were initially arranged by WSU. (CP 101-144) With a prior history of academic disputes (CP 145-249, 293-310), in spring 2000 semester, he had academic dispute in the preliminary examination of the Individual Interdisciplinary Doctoral Program ("IIDP"). Herbert Hill was not authorized to conduct an academic review. (*See*, Graduate Student Code, APP. L Page 8) Howard Grimes, a chairperson of the Committee on Graduate Student Rights and Responsibilities ("CGSRR") (CP 267-272), not only did NOT conduct any hearing, but also performed an investigative function and then arbitrarily affirmed the IIDP exam committee. The IIDP exam was not reviewed by an independent committee having expertise in the student's academic areas of study. None of the members of the CGSRR have academic expertise in the areas.

Without any knowledge of Sakkarapope, Grimes enlarged the issues on the IIDP appeals to include all prior academic disputes in the other programs since 1993 to justify the IIDP dismissal. (*See* Grimes's memorandum of January 10, 2003; CR 399-403, 644-46; CP 980) Sakkarapope

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* *See also*, Brief of Appellant ("BOA") at 9-24; Memorandum in Support of Petitioner's Defense, CP 1129-93. "RP, " "CP" and "CR" refer to "Report of Proceeding," "Clerk's Papers" and "Agency Certified Records," respectively.

persistently appealed the decisions, including an application for adjudication of February 23, 2003. No action was taken by the Board of Regents. Sakkarapope was not afforded a due process hearing under the APA. (CR 64-414; 553-655, 757-1049) After the administrative remedy was exhausted, a Petition for Review was filed July 23, 2003. (CP 1-81)

2.Through the PDA and FERPA, Sakkarapope had made a series of requests for his educational records relating to the IIDP examination and the appeals. Grimes has custody of the records. **To date**, the University released the records of the exam on the portion of that Sakkarapope received a passing grade, but not on the portions of the University claimed he received failing grades.

3. Sakkarapope's academic advisor and department did NOT make any recommendation to drop him from the M.S. Program, a joint program with the IIDP, as prescribed in the Graduate School Policies and Procedures ("GSPP"). (CR550; App. K) The handwritten note also shows that: (i) Sakkarapope made normal progress and (ii) Grimes' retaliation from contesting the IIDP appeals. (CR 13-4, 669)

4. Since Grimes became Dean of the Graduate School, he had began a retaliation campaign terminating Sakkarapope's enrollment since August 26, 2002, "Where is he-how did he get there," (CR 290), and blocking his registration. After unsuccessful attempts to prevent his return to the United States from attending a funeral, Grimes further took a premeditated action through Rob Cassleman. (CR 279-280, 288-96; 725)

After Sakkarapope's appearance at the Board of Regents' meeting in Seattle, January 24, 2003, Grimes premeditatedly terminated Sakkarapope's enrollment from the master program in Statistics retroactively effective January 10, 2003, despite of the Graduate School's normal practice, (*see*, Balzarini's email of 1/31/2003, CR 349) and Sakkarapope's due process hearing pursuant to the APA, WAC 504-04 and the Graduate Student Code. (CR 318-373, 419-24; App. L)

Not only Cassleman intimidated Sakkarapope to depart the United States despite of his requests that the University maintain his lawful status during adjudicative and judicial review proceedings as of Dean DePauw's promise of May 4 and August 10, 2000, (CR 201, 234-42, CR 665), but also, on 6/9/2003, Furnari emailed Daniel Hanson with defamatory statements and urging the immigration authority to take action. (CR 663) Subsequently, the trial court's order of March 5, 2004, was submitted against Sakkarapope in a removal proceeding, * the Immigration Court.

5. The agency certified records do not entirely contain the records of the exclusive basis of the dismissals including the records of the Department of Statistics. RCW 34.05.476. Sakkarapope then objected to the irrelevant records and requested for organizing the records, (CP 492-498), moved for discoveries and subpoenas pursuant to RCW 34.05.558 and .590, and requested for change of venue and an affidavit of prejudice on January 28, 2004. Despite Respondent's inconsistency answers between the interrogatories and the requests for admission, the trial court entered a protective order limiting discovery and quashed two subpoenas of his educational records. Further, the judge refused to step down and denied a motion for continuance. The interlocutory discretionary appeals were consolidated with summary judgment appeal as a motion in brief.

6. On August 22, 2003, the trial court orally denied Sakkarapope's request for a stay of the agency's decision and temporary remedies, RCW 34.05.550, (CP 340-470, RP 1-9), and a stay of a summary judgment decision was later denied. A separate interlocutory discretionary appeal was sought and subsequently denied by the Supreme Court based on a claimed-one-day-late filing, due to a postal zip error, while the 30-day period never runs since the motion to modify was not decided by a panel of the court, but a judge. RAP 17.2.

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* The Immigration Judge's decision from the removal proceeding has been pending review by the United States Court of Appeals for the Ninth Circuit since September 2005.

Sakkarapope then moved to recall the order of February 1, 2005, and the Clerk of this court placed his motions in closed files with no action. Further a request for transfer of the case and a recall of the order of August 20, 2004, were made and then consolidated with the summary judgment appeal, despite of Sakkarapope's objection.

V. ARGUMENTS*

1. The Court of Appeal's Decision Is Inconsistent With *Spokane Research & Defense Fund v. City of Spokane*, 155 Wn.2d 89, 94-95, 117 P.3d 1117 (2005), The PDA And The APA. [Issues # 1, 9]

"A Show Cause Order Is Optional, Not Mandatory, and Intervention Is Allowed;" "We will not erect technical barriers to deny review on the merits when to do so is contrary to the purpose of the PDA;" and "a piecemeal litigation is barred by the doctrine of res judicata, or claim preclusion" *Spokane Res. & Def. Fund, v. City of Spokane*, Id.

There is no basis for exclusion of Sakkarapope right to judicial review under the PDA since he is a direct party, not an intervener. Where a PDA statute is silent, the civil rules govern the procedure. *King County Water Dist. v. City of Renton*, 88 Wn. App. 214, 227, 944 P.2d 1067 (1997). Thus, the APA supersedes the PDA. RCW 34.05.590(2) A civil procedure for the PDA dealing with the agency records under the APA is appropriate. Indeed, it is, **sufficient** to claim relief under the rules. The Court of Appeals, nonetheless, arbitrarily affirmed the trial court's decisions by erroneously and misleadingly citing its own previous ruling as *"reversed on other ground."* The term, "tardy motion," is also misrepresented and unfair. Sakkarapope's motion to show cause was filed as a counterclaim and he has a right under the PDA and the APA, but the agency has burden to

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* *See also*, Brief of Appellant at 24-49; Motion for Discretionary Review (February 17, 2004) at 18-41; Memorandum in Support of Petitioner's Defense, CP 1129-93.

show cause and duty to fully transmit the records. Moreover, it is reasonable to believe that the modification of the language of its opinion was to impartially manipulate the outcome of the trial court's post-judgment decision since it was entered January 5, 2006, a day prior. A new issue also arises whether the Court's opinions of January 5 and February 2, 2006 complied with RCW 2.04.040 since the concurrence of the panel was not clearly identified; therwise, the decisions are invalid.

The records subject to the PDA are the same records of the agency "exclusive bases" for judicial review under the APA. Where the PDA is lawfully incorporated within the APA to specifically deal with the agency records, the PDA becomes part of Sakkarapope's due process right under the APA. The APA does not limit Respondent's right to a full and fair review, but the dismissal of the PDA claim cut one-meal, into a piecemeal litigation preventing a full and fair judicial review. Sakkarapope's right under the PDA would be subsequently barred by the doctrine of res judicata. Such preclusion not only deprived his due process right under the APA, but also abandoned his PDA claim; it does not stand under the equal protection clause or Const. art. 1, 12. *HUNTER v. NORTH MASON HIGH SCH. & SCH. DIST.*, 403, 85 Wn.2d 810, 539 P.2d 845 (1975).

An exercise of discretion that is based on an erroneous interpretation of the law can be freely overturned. *In re Arden*, 176 F.3d 1226, 1228 (9th Cir. 1999). Thus, lower court's decisions should be vacated since they are unconstitutional and inconsistent with *Spokane Res. & Def. Fund v. City of Spokane*, Id., and the purposes of PDA and APA.

2. The Court Of Appeals' Decision Is Inconsistent With *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1 (1999), And *Rust v. WWSC*, 11 Wn. App. 410 (1974); "there is extreme merit" and "I see a lot of merit to those issues" (RP 68-77) [Issues # 2, 9]

"The APA does not expressly authorize summary judgments, but case law....." *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App.1, 14, 979 P.2d 929 (1999). WSU's statute does not allow such proceeding and then the trial court does not have jurisdiction; thus, any judgment entered is void ab initio and is, in legal effect, no judgment at all. *Rust v. WWSC*, 11 Wn. App. 410, 419, 523 P.2d 204 (1974).

The Court of Appeals not only ignored Counsel Gordon's intentionally and continuously committed fraud and misrepresentation of the case law, but also embraced such misconduct by striking Sakkarapope's amended brief on purpose regardless of its merit, RAP 1.2, and disciplinary responsibility of CJC Canon 3. Counsel Gordon violates the RPC 3.1, 3.4 and 8.4; and it should be removed and barred from participating in any further proceedings to which Sakkarapope is a party.

The Court of Appeals not only overlooked the doctrines of finality and exhaustion of administrative remedies and statute of limitation, i.e., *State ex rel. Assoc. of Wash. Indus. v. Johnson*, 56 Wn.2d 407, 353 P.2d 881 (1960), but also misrepresented *LEWIS COUNTY v. PERC*, 31 Wn. App. 853, 644 P.2d 1231 (1982) originally referring to a final decision upon "consummation of the administrative process." The label, "final," affixed to the action is NOT determinative of its finality, i.e., *Isbrandtsen Co. v. U.S.*, 211 F.2d 51, 55 (D.C. Cir. 1954); *Dept. of Eco. v. Kirkland*, 84 Wn2.d 25, 523 P.2d 1181. However, doubts must be resolved in favor of the citizen. *Valley View v. Redmond*, 107 Wn.2d 621, 733 P.2d 182.

The Board of Regents has full power. RCW 28B.30.150(1). Individuals may make **"a direct appeal"** via University President. (*See*, CP 271-3; App. O at 6) Where Sakkarapope was not afforded a due process hearing, it cannot be said such letters of February 1, 2001 and January 31, 2003, NOT from any consummation of administrative

process, constitute a final agency decision. Indeed, the statute of limitation is tolled, i.e., RCW 34.05.534 and .542(3); RCW 34.05.413 and .419; *Hayes v. City of Seattle,* 131 Wn.2d 706, 934 P.2d 1179. Where administrative remedies are exhausted by the ignoring, a decision is "ripe for review" and fully qualifying it as a "final decision". *Dept. of Eco. v. Kirkland* Id. Still, the trial court retains jurisdiction under the APA; the lower courts erred!

> Respondent already conceded in the footnote that:
> ...since the University did not expressly notify Mr. Sakkarapope that "his appeal" was *misdirected*, WSU does *not argue this appeal is untimely*...agrees that he has exhausted his administrative remedies since the GSPP does not require he have the matter reviewed by a *Graduate Studies Committee*. Thus, this matter is ripe for review by the Court. (CP at 991) [Emphasis added]

The statement, "the GSPP does not require he have the matter reviewed by a Graduate Studies Committee," is NOT consistent with the Graduate School Policy as described on page 2. (App. K) The Court of Appeals practically reversed the dismissal of the appeal of the master program on academic ground, but then affirmed for lack of jurisdiction by a double standard of application of laws to inconsistently consider the decisions of February 1, 2001, and January 31, 2003, made by provost and dean, as final for the IIDP and M.S. program dismissals, respectively.

WSU is estopped by the doctrines of justifiable reliance and invited error from inserting an untimely petition arisen from its own negligence and misconduct. *See, Leonard v. Washington Employers, Inc.*, 77 Wn.2d 271, 280, 461 P.2d 538 (1969); *Rust v. WWSC*, Id. Otherwise, RCW 34.05.542(2) and (3) should be considered unconstitutional as it violates the equal protection clause because of the uneven application of "a final decision" and the exhaustion of administrative remedies for the purpose of the APA by

allowing the lower court's rulings to set technical barriers preventing a judicial review of agency's decision. *Hunter,* Id.

The trial court not only found "some genuine issues," "there is extreme merit" and "I see a lot of merit to those issues," (*See* RP 68-77), but also failed to solve the disputes of facts. RCW 34.05.558 In the presence of the genuine issues of facts, a summary judgment is not appropriate. CR 52 and 56; *Ruff v. King County*, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). WSU is not entitled to a judgment. The lower courts abused its discretion and violated the impartiality of CJC Canon 3!

Sakkarapope's due process right has been deprived and he is at least entitled for a new, proper review proceeding. His right to judicial review under the APA shall not be abridged. RCW 34.05.020. Therefore, the lower court's decisions should be reversed, vacated and/or remanded with instruction for a proper proceeding. Nothing obtained from an unauthorized proceeding can be held adversely effect on Sakkarapope.

3. The APA Governs All Judicial Review Of Agency Orders And Actions Unless The Action Is Expressly Excluded By The Act. Academic Dismissals Are Not Excluded" (CP 1215) [Issues #3, 9]

There is no dispute whether academic dismissal is protected under the APA. Respondent already conceded that "[a]cademic dismissals are not excluded." from the APA. (CP 1215), and that "The University's obligation was to afford Mr. Sakkarapope due process in arriving at a decision. *Horowitz*, 435 U.S. at 79-80." (CP 991) *Horowitz v. Board of Curators of the Univ. of Missouri*, 538 F.2d 1317 (8th Cir. 1976); *Schuler v. University of Minnesota*, 788 F. 2d. 510 (8th Cir. 1986). Where WSU adopted rules and procedures, i.e., WAC 504-04-110 WAC 10-08, *see also*, App. J thru O, thus,

an academic dismissal is fully protected of a due process* under the state law with higher standard requirement than that of the minimal due process requirement under the federal constitution.

A "property interest" in continued attendance and school officials' obligations to afford a minimal due process were recognized that the student should be accorded an opportunity to appear personally to contest such allegation. *Gaspar c. Bruton*, 513 F.2d 843, 850-51 (10th Cir. 1975); *Goss v. Lopez*, 419 U.S. at 584, 95 S.Ct. at 741 [519 F 2d at 9]; *Board of Regents v. Roth*, 408 U.S. at 573, 92 S. Ct. at 2707. Thus, a "hearing" is required to be held before the final order becomes effective. *Shirley Bowing v. Board of Trustee of Green River Com. College,* 85 Wn.2d 300(1975); *Smith v. Skagit County*, 75 Wn.2d 715, 453 P.2d 832 (1969).

The dismissal from the M.S. program was NOT on academic grounds, but a dispute of a program completion deadline. *See* CR 669. Grimes is also NOT authorized to make academic decision of dropping a student. (*See* GSPP at 17; CR 550; App. K) Sakkarapope, in fact, received a satisfactory annual evaluation result of making normal progress toward the degree completion. (CR 13-4, 669) Such dispute is a question of fact and law, not involved with scholastic standards, readily for a full due process of law. *Brookins v. Bonnell*, 362 F. Supp. 379, 383 (E.D. Pa. 1973). Indeed, the facts show arbitrary, capricious, and premeditatedly retaliation actions by Grimes, official misconducts. RCW 9A.80.010.

A court has subject matter jurisdiction to decide whether the official procedures used in assigning a student a particular grade were arbitrary and capricious. *OCHSNER v. BOARD OF TRUSTEES*, 61 Wn. App. 772, 773, 811 P. 2d 985 (1991) Under the Graduate Student Code, Sakkarapope

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* Due process of law is defined in *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617 (1968). *See also, Lloyd Sabaudo Societa Anonima Per Azioni v. Elting*, 287 U.S. 329, 77 L. Ed. 341, 53 S. Ct. 167 (1932).

has rights and expectations while WSU has duty to maintain them, (CP 261-271; App. L), to publish rules and procedures, RCW 42.17.250, to notify administrative remedies available, and to fulfill faculty responsibilities (App. O at 25-6). The fact shows that Kenneth Duft not only breached a contract of the agreed content and format of the IIDP exam (CP 74-8) and refused to convene the exam committee to solve the dispute in the result of the written exam, but also rushed into the oral exam and concluded the proceeding. The IIDP exam was never been reviewed by any independent committee having expertise in the academic areas of study. To date, Sakkarapope has not yet seen the entire exams. Hence, the IIDP exam decision was arbitrary and capricious; and the procedural flaws arisen from WSU's failures to perform its duties constitute justifiable reliance and invited error. WSU is then barred from inserting its own negligence and misconduct to justify the dismissals. In the presence of clearly shown constitutional flaws in the "administrative process," i.e., *Cuddy v. Department of Pub. Assistance*, 74 Wn.2d 17, 19, 442 P.2d 617(1968), the dismissals from both programs violated and deprived Sakkarapope's due process right and liberty interest. WSU breached an educational contract.

4. WSU Has No Right And Standing To Quash Educational Records; Judicial Review Is On The Whole Records. [Issues # 2, 3-6, 9]

Instead of solving the disputed issues of facts and agency records,* the lower courts prevented a whole record presented for review and arbitrarily denied Sakkarapope's due process right, RCW 34.05.558 and RAP 9.13, inconsistent with the statutory obligations and judicial standard, i.e., RCW 34.05.020, .554, 558, .562, 570(3); and

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* *See* Motion to Review the Trial Court Decisions Regarding Records, the Court of Appeals, July 25, 2005; CP at 1246-63, 1121-8, 1129-93, 1047-74, 1080-6, 340-486.

.590(2); *Macey v. Depart. of Employment Sec.*, 110 Wn.2d 308, 311, 752 P.2d 372 (1988).

The lower courts, nonetheless, overlooked that WSU has no right and standing to quash Sakkarapope's subpoenas of his own educational records since it is not a student or a parent of a student under FERPA, but WSU has duty to comply with a lawful subpoena and notify the students of the records of such subpoenas as well as duty to disclose the records under the PDA. Such exclusion of the records violated Sakkarapope's due process right under the APA, PDA, and FERPA.

Grimes misleadingly reported a history of Sakkarapope beyond the original issues of the appeals to justify the dismissal. The discoveries are necessary to identify the entire records of the "exclusive basis" of agency decisions. In the absence of any practical harmful side effect, while Sakkarapope was not yet in the room, and without determining sufficiency of the objections to the discoveries and considering his request for compelling the discoveries including Respondent's failure to make three discoveries, the trial court was rush in making a decision preventing further discoveries via an ex parte communication. Such proceeding was prejudicial and violated Sakkarapope's due process right and the impartiality of CJC Cannon 3. *SHERMAN v. STATE*, 128 Wn.2d 164, 905 P.2d 355(1995). (RP 10-30)

The Court of Appeals overlooked its own procedural errors causing a delay, and then imposed guilt on an innocent party to unfairly justifying its decision: "These motions are untimely under the brief schedule in this case, disallowed under the appellate rules, and are otherwise without merit." The RAP 9.13 does not stipulate a specific date and the court did not set a filing schedule for it. Such denial was abused of discretion, unconstitutional and subject to non-binding effect, RCW 42.17.250. Therefore, the discoveries and subpoenas should be compelled.

5. Sakkarapope's Due Process Right Has Been Deprived By The Denials Of Review Of Stay And Temporary Remedies. [Issue # 7, 9]

Petitioner respectfully RENEWs his Motion for Discretionary Review filed in this court September 21, 2004, Case Number 76027-6, and subsequent pleadings to be part of this review.

The decisions of the trial court, the Court of Appeals, and this Supreme Court were based on a technical barrier of an ex parte proceeding, not-citing authorities and a decision of a judge, and a claim of one-day late filing due to a postal zip error, respectively. The 30-day period never runs since the motion to modify was not yet decided by a panel of the court, but a judge. The Court of Appeals misrepresented the issue of an unauthorized action by a judge and unfairly mischaracterized Sakkarapope's action. This court also overlooked the facts and the doctrine of substantial compliance. The denials were NOT consistent with the purposes of the APA, RAP 17.2, RAP 1.2, and RCW 2.04.040. Consequently, Sakkarapope due process right to review of stay under RCW 34.05.550 has been deprived.

6. The Lower Courts Have No Jurisdiction To Enter Any Decision In Regard To FERPA, Outside Of Petition For Review. [Issue #8, 9]

Because of the counsel's misrepresentation of the context of the paragraph 3B and related issues of the Petition for Review, a request for taking supplemental jurisdiction was filed in the U.S. District Court and the trial court was notified of the withdrawal. Such portion of the FERPA's claim in the trial court's order was entered outside of its jurisdiction and subject matter before it. The FERPA should NOT be included. Thus, it should be vacated to prevent a miscarriage of justice.

VI. CONCLUSION

In the presence of clearly shown constitutional flaws in the administrative and judicial processes and misconducts, Sakkarapope's due process rights have been deprived. WSU is barred by the doctrines of justifiable reliance and invited error arisen its own failure, negligence and misconduct. The agency's decisions are ripe for review. Petitioner respectfully asks this case be heard by En Banc and this court grants relief:

(1) **Declare** the trail court proceedings are mistrial, unconstitutional; and **reverse and vacate** all the lower courts' decisions, **and remand** with instruction for a proper proceeding; and/or

(2) **Invalidate** the IIDP preliminary examination and the dismissals of both programs; and **restore** Sakkarapope's status quos in both programs. Such invalidation does not constitute any passing or failing an exam. **If** WSU is not able to secure Sakkarapope's graduations and be free from prejudice and retaliation, **transfer** him to University of Washington at the expense of WSU upon graduation; and

(3) **Award** reasonable costs and expenses including monetary compensation as requested including time-lost compensation from the actions in an unauthorized summary judgment proceeding;

(4) **Order** WSU make proper correction of all misleading and misrepresentation information including a written statement of apology; and **withdraw** Counsel Gordon **and bar** from participating in any further proceeding; **and bar** the trial court judge from presiding over any proceedings on remand **and/or transfer** the case to Thurston or Spokane County; **and publish** the opinions.

DATED this 13th day of February, 2006.

Respectfully submitted,

s/ B. Sakkarapope

Petitioner

LIST OF APPENDICES

App.	Description
A	The decision of the Court of Appeals, Division III, terminating review filed September 8, 2005.
B	The Order Granting Motion for Reconsideration in Part; Order Denying Motion to Strike Opinion; Order Denying Motion to Publish; and Order Amending Opinion filed January 5, 2006.; The Order Denying (Second) Motion for Reconsideration; Order Denying Motion to Publish; and Order Denying Motion to Consolidate entered February 2, 2006.
C	The Order Granting Motion for Extension of Time to File Response and Order Denying Motion to Modify Commissioner's Ruling filed August 20, 2004
D	The Court of Appeals Commissioner's Ruling filed May 7, 2004.
E	The trial Court's Order Denying a Stay of Proceeding to Enforce a Judgment filed March 19, 2004.
F	The Supreme Court's Order denying Motion to Modify the Supreme Court Commissioner filed February 1, 2005. (Case No. 76027-6)
G	The Supreme Court Commissioner's Ruling Denying Extension of Time filed November 23, 2004. (Case No. 76027-6)
H	The Court of Appeals' decision by the Clerk's letter dated June 17, 2005, to consolidate the proceedings on Motion to Recall and Transfer (May 2, 2005), Motion to Modify the Clerk's Ruling (May 4, 2005) and Motion to Call for Attention
I	The trial court's decision of March 5, 2004
J	Graduate Studies Committee
K	Graduate School Policies and Procedures
L	Graduate Student Code
M	IIDP Faculty/Student Handbook
N	Master of Science/Ph.D in Statistics and Other Fields Guideline and Master of Science in Statistics
O	Faculty Manual (Excerpts)

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No. 05-75413

Agency Number A72-571-155

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BENJAPON SAKKARAPOPE, Petitioner,

V.

ALBERTO GONZALES, Attorney General Respondent.

PETITION FOR REVIEW

FROM THE BOARD OF IMMIGRATION APPEALS

BRIEF OF PETITIONER

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I. JURISDICTIONAL STATEMENT

1. The Board of Immigration Appeals ("BIA") entered a final order of removal on September 12, 2005. (Excerpt Vol. I 1-4)

2. The Immigration Judge ("I.J.") entered its decision in the Matter of Benjapon Sakkarapope, April 23, 2004, in a removal proceeding. (Excerpt Vol. I 103-111)
3. To date, no court has upheld the validity of the orders.
4. Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1).
5. Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2) because the Immigration Judge completed the removal proceeding in Seattle, State of Washington, April 22, 2004, within the jurisdiction of this judicial circuit.
6. This petition is timely filed pursuant to 8 U.S.C. § 1252(b)(1) as it is filed within 30 days of the BIA's final order of removal, September 12, 2005.

II. STATEMENT OF THE ISSUES

A. Assignment of Error

No. 1: The Immigration Judge erred in entering the decision of April 23, 2004, in the removal proceeding that "I find removability has been established by clear and convincing evidence," (I.J. at 8; Excerpt Vol. I 110) because:

(i) The conclusion was not supported by material facts of evidence, and based on false, misleading and prejudicial testimonies and evidences;

(ii) The conclusion was erroneously interpreted the laws;

(iii) The I.J. has no authority to determine Sakkarapope's student enrollment status at WSU;

(iv) The removal proceeding was incomplete and a mistrial;

(v) The government is barred from removing the alien as a result of the government's affirmative misconducts; and

(vi) The order violates Sakkarapope's constitutional rights under the Fifth and Fourteenth Amendments of the United States Constitution.

No. 2: The BIA erred in finding that "[w]hile we find no error in the Immigration Judge's grant of voluntary departure to the respondent, he objected on appeal to being provided that form of relief...We construe this as a withdrawal, with prejudice, of any request for voluntary departure" (Excerpt Vol. I 4) because:

(i) The voluntary departure relief was granted without a request by the alien and not in compliance with INA 240B, 8 C.F.R. 240.26 and precedents; and

(ii) Such "a withdrawal, with prejudice, of any request for voluntary departure" violates the alien's due process right and deprives his right to such relief in other proceeding; it is prejudicial to the alien.

No. 3: The BIA erred in concluding that "[w]hy an alien failed maintain status is generally irrelevant with respect to removability," (Excerpt Vo. I 3) because:

(i) The instant case is under a specific circumstance and the *Matter of Teberen*, 15 I&N Dec. 689, 690 (BIA 1976) does not apply to the case;

(ii) The government is barred from removing the alien as a result of the government's affirmative misconduct. *INS v. Maranda* (Sup.Ct. 1982); *McLeod v. Peterson* (3d Cir.1960); *Corniel-Rodriguez v. INS* (3d Cir.1976); *Oscar Scoop-Gonzales v. INS* (9th Cir. 2000);

(iii) The Government is promissory estoppel from removing the alien by the University's promise of ensuring Sakkarapope has appropriate immigration status in the Dean DePauw's letters of May 4 and August 10, 2000;

(iv) The BIA is constrained by the circuit court's precedents. *Anselmo*, 20 I&N Dec. 25 (1989); *Abdulai v. INS*, 239 F.3d 542 (3d Cir. 2001); and

(v) The BIA has no authority to determine Sakkarapope's student enrollment status at WSU.

No. 4: The BIA erred in concluding that:

> The respondent's constitutional/fair hearing-arguments are meritless. We have no jurisdiction to review the decision of the Department of Homeland Security (the "DHS,"...) to exercise its prosecutorial discretion to institute removal proceedings....Neither this Board nor the Immigration Judge has authority to equitable estop the DHS" from undertaking a lawful course of action that it is empowered to pursue by statute and regulation....The respondent failed to assert any Fifth Amendment right not to testify at the hearing, thus he may not do so now. His testimony may properly be considered....Notwithstanding the respondent's appellate contention at his merits hearing.... The respondent did not request to have any additional question asked, nor has the respondent indicated on appeal what additional information—materially related to his removal—he would seek. We find that the respondent was provide a full and fair hearing....We deny the respondent's motions for additional development to strike the DHS's appellate brief, as these requests are meritless. (Excerpt Vo. I 4),

because:

> (i) Where recognizing an issue of constutionality, a single member still acted beyond its authority to make such conclusion;
>
> (ii) The BIA misrepresented and overlooked the issues and the whole factual evidences before it;
>
> (iii) The removal proceeding was never completed and concluded in a normal course of proceeding, but was arbitrarily ended while the government's remaining evidences and witness were not presented; the alien's right to cross-examine those evidences and witnesses was violated;

(iv) The government counsel inserted a defamatory statement at the hearing and refused to disclose any record of evidence supporting such claim; and

(v) The BIA should consider any actions that occurred prior to any decision to commence the removal proceeding. *Wong v. United States*, 373 F.3d 952, 965 (9th Cir. 2004); and

(vi) The I.J. and the BIA violates Sakkarapope's constitutional due process rights under the Fifth and Fourteenth Amendments.

No. 5: The BIA violated its streamlining policy (January 14, 2002) because the pending appeal of the instant case does not fall within 8 C.F.R §3.1(d)(1) or (a)(1) for a single member of the Board to take action:

(i) The BIA's order of September 12, 2005, was unauthorized;

(ii) The BIA abuses its discretion;

(iii) The conclusion that "[t]he Immigration Judge's decision is adopted and affirmed as no clear error has been shown with respect to the Immigration Judge's factual findings," (Excerpt Vol. I at 3) was unsupported by the whole facts of material evidence in the records and based on the government's affirmative misconducts; and

(iv) The BIA's order of September 12, 2005, is unconstitutional.

B. Issues Pertaining to Assignment of Error

No. 1: Whether the BIA violated its streamlining policy and the alien's due process right, then the BIA's order of September 12, 2005, is unconstitutional.

No. 2: Whether the government officials committed affirmative misconducts substantial cause of the removability and whether the Government is equitably estopped from removing the alien as a result of the government's affirmative misconduct. *INS v. Maranda* (Sup.Ct. 1982); *McLeod v. Peterson* (3d Cir.1960); Oscar Scoop-Gonzales v. INS (9th Cir. 2000).

No. 3: Whether the Government is promissory estopped from removing the alien by the University's promise in the Dean DePauw's letters of May 4 and August 10, 2000, that it would ensure Sakkarapope has appropriate immigration status.

No. 4: Whether the BIA and I.J. do not have jurisdiction to determine Sakkarapope's student status at WSU; alternatively, whether the student enrollment status in this instant case is determined by the finality of judicial review of Administrative Procedure Act ("APA"), RCW 34.05.

No. 5: Whether a right to judicial review under the state APA is an F-1 VISA alien's due process right guaranteed by the constitutions; alternatively, whether a removal of the alien while a right to appeal is not expired violates the due process and equal protection clauses of the Fourteenth Amendment.

No. 6: Whether a removal of Sakkarapope will deprive his rights and property interests: (i) remedial action, (ii) right to continue his program of study, (iii) educational contract, and (iv) right under the Graduate Student Code.

No. 7: Whether the removal proceeding of April 22, 2004, violated Sakkarapope's statutory right to a full, fair, impartial due process guaranteed by the Fifth and the Fourteen Amendments of the United States Constitution; alternatively, whether the removal proceeding hearing was incomplete, unfair and mistrial.

No. 8: Whether the Notice to Appear was defective as a result of the government's affirmative misconduct.

No. 9: Whether the conclusion that "I find removability has been established by clear and convincing evidence," (Excerpt Vol. I 31), was not supported by material facts of evidence, and whether the conclusion was based on false, misleading and prejudicial testimonies and evidences.

No. 10: Whether the Immigration Judge erroneously interpreted the laws in regard to Sakkarapope's lawful status and the definition of student enrollment status. Alternatively, whether Sakkarapope literally failed to maintain his nonimmigrant status as a result of government officials'

affirmative misconduct, but he did not in fact legally fail to comply with the conditions of his nonimmigrant status which he met statutory requirement to properly maintain his status and reasonably fulfill his legal obligation at his best knowledge and ability.

No. 11: Whether the voluntarily departure relief was granted in violation of INA 240B, 8 C.F.R.240.26, and precedents, and whether "a withdrawal, with prejudice, of any request for voluntary departure" violates the alien's due process right and deprives his right to such relief in other proceeding.

No.12: Whether Sakkarapope meets the eligibility to adjustment of status of nonimmigrant to that of an alien lawfully admitted for permanent residence, and whether the I.J and the BIA abused discretion in denying cancellation of the removal proceeding and adjustment of status.

III. STATEMENT OF THE CASES AND THE FACT*

1. Sakkarapope initially entered the United States in August 1992 as a non-immigrant F-1 visa and had continuously enrolled at Washington State University ("WSU") through various programs from an Intensive American English Program to a doctoral program. Since the initial date of entry, he was out of the country total of 114 days; no single absence lasted longer than 90 days. He has no criminal records in both the United States and his native country.

2. Sakkarapope was NOT a regular student like those who came to schools in the States on their own initiatives. His admission to a graduate program at WSU and financial assistance were arranged by the University while he was an Associate Dean at Prince of Songkla University, Thailand. (Excerpt Vol. II 408-15)

3. In spring 2000 semester, Sakkarapope had an academic dispute with the University in regard to the IIDP preliminary examination. During the Adjudication of Rights and Responsibilities of the Graduate Student Code,

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* *See* the Appeal Brief at 6-18 for details facts and incidents leading to the issues for review, Excerpt Vol. I 45-57.

(Addendum 40-44), Howard Grimes was appointed to a chairperson of the Committee on Graduate Student Rights and Responsibilities ("CGSRR"). Grimes did not conduct any hearing, but arbitrarily entered a decision affirming the IIDP examination committee. Sakkarapope had appealed the decisions through the University administrative channels, but his appeals were ignored.

During the appeal process, Dean of the Graduate School promised that:

> (i) In her letter of May 4, 2000, "Because you are also pursuing a master degree in statistics, I will allow you to continue your studies toward completion of the master degree but you will not be allowed to continue in the doctoral program pending the outcome of the appeal process." (Excerpt Vol. II 533-4)
>
> (ii) In her letter of August 10, 2000, "Please be assured that we will work with International Programs regarding appropriate immigration status for you during the appeal process." (Excerpt Vol. II 535)

4. The IIDP dispute led to a series of litigations in both state and federal courts.* Through public record and

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* The four litigations in four courts include:
(i) A FERPA complaint was filed with the Secretary of the U.S. Department of Education September 27, 2002. On January 20, 2004, the Secretary denied his due process right by closing his complaint without findings. A civil complaint was filed with the U.S. District Court and now the case has been pending review by this court, Case # 04-35643. Howard Grimes is also part of allegations in this civil complaint.
(ii) A petition for review of the University's decision and actions was filed with the Whitman County Superior Court on July 23, 2003, pursuant to the state Administrative Procedure Act, RCW 34.05. On March 5, 2004, the trial court granted a motion for summary judgment in the University's favor and then it was used as an evidence in the removal proceeding and as a basis for summary judgment in the U.S. District Court.
(iii) The University not only terminated Sakkarapope's enrollment, but also his temporary employment. As the result, a remedial action was

FERPA requests, Sakkarapope had made a series of requests for his educational records relating to the IIDP examination and the appeals. Grimes, an official who had custody of Sakkarapope's education records, did not release the records of the CGSRR. To date, the University released the records of the IIDP examination on the portion that he received a passing grade, but not the portions of the claimed failing grades. (Excerpt Vol. I 45-54)

5. At the beginning of fall 2002 semester, Sakkarapope's father-in-law passed away and he left the country on September 11, 2002, to attend his funeral and returned to the States on October 23, 2002. The information in this regard on the Notice of Appear and Form I-213 were not correct—false allegation.

Before leaving Sakkarapope had met and consulted with his academic advisor, Dr. Hao Zhang, and International Student Advisor, Rob Cassleman in regard to his temporary departure. Sakkarapope was permitted to enroll for 3 credits in that fall 2002 semester and the University issued a new I-20ID for reentry to the country. (Excerpt Vol. II 302, 306-7)

6. Approximately in summer 2002, Howard Grimes was promoted to Dean of the Graduate School. Howard Grimes had began his campaign of retaliation terminating Sakkarapope's enrollment from his master program in Statistics since August 26, 2002, "Where is he-how did he get there." Without informing Sakkarapope and consulting with his academic advisor and department chair, Grimes, arbitrarily and secretly dropped him from the system on 10/22/2002 while he was out of the country to attend his father-in-law funeral. Then, Grimes made false statements in the memorandum of November 25, 2002, informing the immigration authorities to not allow Sakkarapope to return to the States. (Excerpt Vol. II 303-17)

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requested pursuant to WAC 251-12-600. This incident led to subsequent appeals pending for judicial review in the Thurston County Superior Court. (Agency Certified Record ("ACR") 1499)

In the handwritten note of an International Student Advisor which the University certified to the state trial court, the notes show the facts:

> (i) Dated 12/2/02, "Howard Grimes in exercise room. He may be willing to let Ben continue, but the letters (regarding appeal) have to stop;" (ii) Dated 12/6/02, "and earlier conversation: Hao Zhang (major professor) Believes that Ben is OK as far as degree, making 'normal progress.' Was surprised to hear that Grad School believes he is finished at WSU. Knows about Ben's attempt to appeal results of comprehensive exams...;" (iii) Dated 12/6/02, "Nancy Intermill, prog. Coordinator in Statistics says as far as they know Ben is OK to continue his program. Have not received anything from Grad School informing them otherwise..;" (iv) Dated 4/11/03, "Zhang..reporting him if he could be persuaded to give up his appeal effort for Phd and be allowed to stay and finish M.S.? He can ask Ben next Thursday. I said I would check w/ Mary F." (Excerpt Vol. II 321)

In her email to Grimes dated 1/31/2003, Margo Balzarini indicated that:

> I have drafted a termination letter for Benjapon. Steve Vinsonhaler called me today to check on the letter. Enrollment is not always terminated when a student is dropped. Frequently we allow then to complete the term, but he wanted to make sure that we terminated the enrollment as soon as possible. We can have Kris submit the cancellation of enrollment if you agree. I am assuming that well be your Kris. As you can see, I included that statement in the letter. (Excerpt Vol. II 325-6)

Sakkarapope's academic advisor and department chair did NOT make any recommendation to the Graduate

School to drop him from the M.S. Program as procedure in the Graduate School Policies and Procedures ("GSPP"). (Addendum 29) Grimes issued a memorandum of November 25, 2002, containing false statements that:

> Benjapon Sakkarapope has been past his completion data as a WSU graduate student since summer, 2001. He is officially out of status and he is not making adequate progress towards a graduate degree. Thus, we recommend that he not be allowed to enter the US on a student visa. If he returns to WSU by any mechanisms, he will need to re-apply to the Graduate School for admittance." (Excerpt Vol. II 317)

7. After exchanging email communication, on December 5, 2002, a designed school official, Mr. Rob Cassleman, disclosed the memorandum of November 25, 2002, and stated that "It is apparent from reading this statement that your current status as a student and non-immigrant is a problem. I suggest you reestablish your F-1 status as soon as possible." (Excerpt Vol. II 316) Mr. Rob Cassleman further suggested Dr. Hao Zhang to have Sakkarapope initiated a request for under-enrollment permission. Then, Dr. Zhang followed Mr. Cassleman's instruction by submitting his memorandum of December 12, 2002, to Grimes. Subsequently, Grimes issued a memorandum of December 18, 2002, imposing a deadline of program completion on January 27, 2003, while it was asked for. The department never established/imposed any program completion deadline. (*See also*, email communications with Rob Cassleman, Excerpt Vol. II 505-27)

8. On January 5, 2003, Sakkarapope made a written objection to the memorandum of December 18, 2002. On January 7, 2003, a request for explanation, interpretation, and clarification of blocking the enrollment registration on the METRO system due to a false statement--"a Grad School Academic Deficiency," was made. No response was made by Grimes.

On January 7, 2003, Sakkarapope made a request to the Registrar to manually enroll Sakkarapope for the Spring 2003 semester. The Registrar did manually enroll Sakkarapope as requested on January 10, 2003.

On January 17, 2003, Sakkarapope made a request before Howard Grimes to make proper correction of his decisions and actions in regard to his memoranda of November 25 and December 18, 2002. No response was made by Howard Grimes. No correction of the inaccurate information was made.

In consultation with Assistant Attorney General Steve Vinsonhaler, on January 31, 2003, Grimes premeditatedly terminated Sakkarapope's enrollment from a master program in Statistics retroactively effective January 10, 2003, while the appeals of the University's decisions and actions in regard to the IIDP preliminary examination are ongoing and active. (Excerpt Vol. II 325-6)

On February 6, 2002, Sakkarapope made a written appeal of Howard Grimes' decisions and actions with subsequent appeals before the Provost, University President and the Board of Regents. (Excerpt Vol. II 450, 466-504)

9. Mr. Rob Cassleman, a designed school official, issued an email dated February 24, 2003, stating that:

> "Since you have been disenrolled, it appears your F-1 status has expired and since you have not completed your degree, you will need to depart the United States immediately. Please keep in mind that under SEVIS there are severe consequences for failing to maintain status or depart the US." (Excerpt Vol. II 527)

In response to Mr. Cassleman's email, Sakkarapope made a request before the University dated March 1, 2003, to maintain lawful status during adjudicative and judicial review proceedings. (Excerpt Vol. II 501-4) No response was made.

10. On 6/9/2003, Ms. Mary Furnari wrote an email to Mr. Daniel Hanson, the BCIS, informing that the University entered Sakkarapope into the SEVIS system and terminated

him on the same day, on May 1, 2003, while the student had not yet made a request for and was still in a time frame for requesting a SEVIS I-20 replacement. (Excerpt Vol. II 450)

11. On August 28, 2003, a Petition for Authorization was filed with the Service via Daniel Hanson, School Inspector, BCIS. (Excerpt Vol. II 456-535) According to the fax cover message dated 9/18/2003 by Diana M. Wolder, "We need your advice on how to responds to the petition attached. The petitioner is no longer attending school. ICE is ready to issue NTA. Should we issue NTA while this issue between the petitioner and school is outstanding?" Daniel Hanson took action according to Ms. Furnari's request. (Excerpt Vol. II 536-7)

12. The Service issued a Notice to Appear and the Order of Release on Recognizance on September 16 and 25, 2003, respectively. A Notice of Hearing was issued dated 12/15/2003 and a hearing of removal proceeding was held on April 22, 2004. The BIA entered its decision September 12, 2005.

IV. SUMMARY OF ARGUMENTS

The Service, Immigration Judge and the BIA do not have jurisdiction to determine Sakkarapope's student status at WSU, but the resolution of his student status is from the finality of the disputes between WSU and Sakkarapope which is under the jurisdiction of the state statute, RCW 34.05. Sakkarapope might literally fail to maintain his nonimmigrant status as a result of the officials' affirmative misconduct, but he did not in fact legally fail to comply with the conditions of his nonimmigrant status which he met statutory requirement to properly maintain his status and reasonably fulfill his legal obligation at his best knowledge and ability. Such failure calls for a technical question.

The I.J. erroneously interpreted what legally constitutes the terms: (i) "student." (ii) "to maintain a student status," (iii) "a legitimate academic course load," (iv) "normal progress toward completing educational objective,"

(v) "cause of failure," and (vi) "exhaustion of administrative appeal." The court erroneously interpreted the provision of 8 CFR 214(f), state laws and relevant regulations. The I.J. did not review facts with respect to all relevant laws and University's policies and procedures, but adopted its own personal perception.

The Record of Deportable/ inadmissible Alien was premeditatedly initiated by the government with false, inaccurate and illegal information about the alien legal status and standing. The Notice of Appear and the Form I-213 were invalid. The evidences showed a systematically premeditate misconduct of the Service's and Washington State University's officials. The conduct of the United States government is a substantial cause of an alien's removability. The government is barred from removing the alien by equitably estoppel as a result of the government's affirmative misconduct, and by a promissory estoppel as a result of the University's promise in the Dean DePauw's letters of May 4 and August 10, 2000, that it would ensure Sakkarapope has appropriate immigration status.

The removal proceeding conducted was arbitrary or illegal, and was not comported with the requirements of Due Process. The INS has the burden of establishing by clear convincing evidence that, in the case of an alien who has been admitted to the U.S., the alien is removable. The government failed to meet its burden of proof, the immigration judge should have decided for the alien. The BIA should declare the removal proceeding is a mistrial.

The voluntarily departure relief was granted without a request of Sakkarapope and his concession to the removal. The relief was granted in violation 8 C.F.R. 240.26; INA 240B. Such order granting voluntary departure was unconstitutional.

The BIA violated its streamlining policy because the instant case does not fall within either 8 C.F.R §3.1(d)(1) or 8 C.F.R §3.1 (a)(1).

Sakkarapope meets the conditions for adjustment to a permanent resident. Like Aliens who lived and worked for 6 years in a third country as lawful temporary residents with option to become permanent residents were firmly resettled there. *Abdille v. Ashcroft*, 242 F.3d 477 (3d Cir. 2001); D-L- & A-M-, 20 I&N Dec. 409 (1991). Sakkarapope has lived and worked in this country for over 13 years. He was outside the country for only 114 days since August 1992. He should be firmly settled here. An adjustment of his nonimmigrant status to a permanent resident should be granted. The I.J. and the BIA abused discretion.

V. ARGUMENTS

A. Standard Review

Questions of law are reviewed de novo. See, e.g., *Chavez-Perez v. Ashcroft*, 386 F.3d 1284, 1287 (9th Cir. 2004) (equal protection challenge); *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105, 1107 (9th Cir. 2003) (due process challenge). The court "will not defer to BIA decisions that conflict with circuit precedent." *Melkonian v. Ashcroft*, 320 F.3d 1061, 1065 (9th Cir. 2003). The court will not defer to the BIA's interpretation of statutes that it does not administer. *See Garcia-Lopez v. Ashcroft*, 334 F.3d 840, 843 (9th Cir. 2003)(holding that the court would not give deference to the INS's interpretation of the California Penal Code).

The IJ's or BIA's factual findings are reviewed for substantial evidence. See, e.g., *Ramos-Vasquez v. INS*, 57 F.3d 857, 861 (9th Cir. 1995) (reviewing denial of asylum, withholding, and negative credibility findings for substantial evidence). "The substantial evidence test is essentially a case-by-case analysis requiring review of the whole record. The substantial evidence standard is defined as "the administrative findings of fact are conclusive unless any reasonable adjudicator would be compelled to conclude to the contrary." 8 U.S.C § 1252(b)(4)(B); *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1102 (9th Cir. 2004).

The BIA must follow circuit court precedent in cases arising in the circuit. *Anselmo*, 20 I&N Dec. 25 (1989); *Abdulai v. INS*, 239 F.3d 542 (3d Cir. 2001). The BIA abuses its discretion when it acts "arbitrarily, irrationally, or contrary to the law." *See Lainez-Ortiz v. INS*, 96 F.3d 393, 395 (9th Cir. 1996). "The BIA abuses its discretion when it fails to comply with its own regulations." *Iturribarria v. INS*, 321 F.3d 889, 895 (9th Cir. 2003); *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1227 (9th Cir. 2002) (remanding motion to reopen to apply for suspension of deportation where BIA did not engage in substantive analysis or articulate any reasons for its decision); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1141–42 (9th Cir. 2004) (holding that conclusory statements are insufficient, and that the BIA must provide an explanation showing that it has "heard, considered, and decided" the issue (internal quotation marks omitted)).

The court retains petition-for-review jurisdiction to review constitutional claims, "even when those claims address a discretionary decision." *Ramirez-Perez v. Ashcroft*, 336 F.3d 1001, 1004 (9th Cir. 2003); *Tovar-Landin v. Ashcroft*, 361 F.3d 1164, 1166 (9th Cir. 2004) (retaining jurisdiction over due process and equal protection challenges to voluntary departure regime); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850 (9th Cir. 2003) (retaining jurisdiction on petition for review of denial of cancellation to review due process challenge to streamlining procedure); *Reyes-Melendez v. INS*, 342 F.3d 1001, 1006 (9th Cir. 2003) (retaining jurisdiction insuspension case to review due process challenge based on IJ bias); *Vasquez-Zavala v. Ashcroft*, 324 F.3d 1105 (9th Cir. 2003) (retaining jurisdiction over due process claim); *Sanchez-Cruz v. INS*, 255 F.3d 775, 779–80 (9th Cir. 2001) (holding that the court would retain jurisdiction over allegations of IJ bias, but that applicant failed to exhaust her due process claim before the BIA); *Larita-Martinez v. INS*, 220 F.3d 1092, 1095 (9th Cir. 2000) (retaining jurisdiction and rejecting due process claim that the BIA failed to review all relevant evidence submitted

in suspension case); *Antonio-Cruz v. INS*, 147 F.3d 1129, 1131 (9th Cir. 1998) (retaining jurisdiction in voluntary departure case over due process claim based on IJ's "harsh manner and tone").

B. Government's Affirmative Misconduct and Motive.

Petitioner respectfully submits that WSU's and the Service's officials had committed affirmative misconducts substantially caused the alien's removability. The Government is barred from removing the alien by the doctrine of estoppel as a result of the government's affirmative misconduct. *INS v. Maranda* (Sup.Ct. 1982); *McLeod v. Peterson* (3d Cir.1960); *Corniel-Rodriguez v. INS* (3d Cir.1976); *Oscar Scoop-Gonzales v. INS* (9th Cir. 2000). The Government is also promissory estopped from removing the alien by the University's promise of ensuring in the Dean DePauw's letters of May 4 and August 10, 2000, that Sakkarapope has appropriate immigration status.

The evidences offered to the court by the government are a proof of the government's affirmative misconducts. The government's evidence of the state trial court order of March 5, 2004, was obtained through an unauthorized summary judgment proceeding. *ALPINE LAKES v. NATURAL RESOURCES*, 102 Wn. App. 1, 14, 979 P.2d 929(1999); *Eastlake Community Council v. City of Seattle*, 64 Wn. App. 273, 276, 823 P.2d 1132(1992). The Record of Deportable/Inadmissible Alien was premeditatedly initiated by the government with false, inaccurate and illegal information about the alien legal status and standing. (Excerpt Vol. I 249-67) Sakkarapope has standing to judicial review under RCW 34.05.530. (Addendum 77) The facts of evidences stated herein showed a systematically premeditate misconduct of the Service's and state's officials.

Grimes had begun searching for information to serve his personal purpose since on or about 8/26/20, with handwritten note, "Where is he—how did he get there," and arbitrarily, quietly dropped the alien from the system on

10/22/02 prior to receiving Dr. Zhang's memorandum of December 12, 2002. With a long campaigning of official misconduct, the termination of January 31, 2003, was arbitrarily again made by Grimes who has personal interest in the outcome of the termination, and then submitted its decision to the Services as evidence to initiate a removal proceeding. Such termination is constituted retaliation by the University's officials while the alien was seeking available administrative relief. The removal proceeding was caused by the government's affirmative misconduct.

Sakkarapope had never received any notification of dissatisfaction of academic performance from his academic advisor and department chair, as well as the memorandum of November 25, 2002, from the Graduate School. The last annual evaluation was satisfied. (Excerpt Vol. II 300) His academic advisor and department chair did not make any recommendation to the Graduate School to drop him from his M.S. Program. The decision and action of September 19, 2000, and January 31, 2003, by Grimes had nothing to do with academic performance. He does not have any expertise in the student's academic areas of study, but a personal interest. According to the Graduate School Policies and Procedures (*see* Addendum 29), Grimes is not authorized to make any evaluation of students, and to make an academic decision to drop a student from his program.

On January 16, 2003, Sakkarapope's enrollment status was properly registered for six credits of STAT 702, independent research study, at WSU. The tuition payment was made on February 4, 2003. The enrollment demonstrates the alien's intention and effort to maintain his lawful status. Pursuant to 8 CFR 214.1(f)(6)(F)(iii) the reduced course load is also considered to be maintaining status. The effective termination dates are not consistent--December 20, 2002, January 10 or 28 or 31, or February 3, 2003. (*See also,* detail of Grimes' misconduct; Excerpt Vol. I 61-8; Vol. II 295-400)

Grimes, Dean of the Graduate School, is not a rule-making body and not part of department administration.

Grimes is not Sakkarapope's academic advisor and department chair, and he shall not make any academic decision. An application of unpublished distinction between the words is an abused of discretion. *State ex rel. Bartlett v. Pantzer*, 489 P.2d 375 (Mont. 1971). Such dismissal has no effect on Sakkarapope's student status in the program, but constitutes an official misconduct. RCW 42.17.250; RCW 9A.80.010*.

Petitioner respectfully submits that the allegation #3 that "You were last admitted to the United States at Seattle, Washington, on or about January 16, 2002, as a nonimmigrant student to attend college at Washington State University, Pullman, Washington," was inaccurate. The fact was that the alien was last admitted to the United States at Seattle, on October 23, 2002, as a nonimmigrant student to attend college at WSU. This incorrect information obviously shows that the Service did not act in a responsible manner when creating the Form I-213. Without thoroughly investigation of the cause, but it simply co-conspired with the state officials for personal interest, took whatever the state officials said as correct for granted. Such conduct and practice is dangerous to the public at large.

The Government's officials have motives from initiating a removal proceeding. A removal will not only destroy Sakkarapope's status quo, but also inhibit his ability to maintain effective litigations in both state and federal courts. A removal will provide an opportunity to the government officials to deny the other type of visa to re-entry the States to maintain his ongoing litigations. The affirmative misconducts of the state and federal officials show there is a probability of that the DHS would deny his

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* A public servant is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:
(a) He intentionally commits an unauthorized act under color of law; or
(b) He intentionally refrains from performing a duty imposed upon him by law;
(c) Official misconduct is a gross misdemeanor. RCW 9A.80.010.

application for reentry on the other visa for litigation purpose because the officials have conflict of interest and motive to take such abusive action. Thus, the state officials would gain from a removal; it is a motive behind the exercising the I.J.'s discretion.

Sakkarapope needs to access law resources, including local law libraries, in preparing and maintaining his ongoing litigations. A removal will create injustice to Sakkarapope as a party who has equal right and privilege, less efficient and effective in the judicial proceedings. This will not serve the just and promote the constitution of this great nation. A removal will place Sakkarapope in greater financial burden that he might not be able to retain the ongoing litigation, in which it will be in the benefit of the misconduct and abuse of discretion of the officials.

Based on the facts and circumstance presented, it is reasonable to believe that the only unfavorable factor is the INS's interest in bringing removal proceedings to a quick conclusion to cover up the official misconduct on behalf of the University's officials, as discussed above. (*See also*, *SOCOP GONZALEZ V INS*, (9th Cir. 2000).

Therefore, the government did not have full and accurate information prior to the time it created such a Record of Deportable/Inadmissible Alien, the Form I-213. The government made some correction after it was revealed by Petitioner's documents and testimony. The counsel did not establish the correct information prior to Petitioner's testimony and objection. Petitioner disproved the government's information by his testimony and documents of evidence. The correction after Petitioner filed such documents of evidence and made testimony, was prejudiced and not valid. The Notice of Appeals and the Form I-213 were entered by fraud of the Service and the state officials. The incorrect statements or errors in the Notice to Appear do not render it invalid, if the service counsel establishes the correct information at the hearing. *Madrona Banez v. Boyd* (9th Cir. 1956). In this instant case, the Service did not

establish correct information about the alien by itself, thus, the Form I-213 is invalid and then the Notice to Appear was invalid. The Notice to Appear was defective and unconstitutional. The removal proceeding as a result of the government's affirmative misconduct should have been cancelled.

C. The Removal Proceeding of April 22, 2004, Is a Mistrial.

Petitioner respectfully submits that the removal proceeding of April 22, 2004, violated Sakkarapope's statutory right to a full, fair, impartial due process guaranteed by the Fifth and the Fourteenth Amendments.

Petitioner was not fully afforded opportunities to cross-examine the Government's evidence and witness, to which he made written objections. Petitioner's statutory right was violated. While allowing Ms. Furnari to answer the written questions, the Immigration Judge inconsistently and arbitrarily overruled Sakkarapope's objection and denied his request that Howard Grimes answer his written questions, denying taking deposition and overruling the alien's objection to Grimes' testimony. Those written questions were admissible on merit as relevant to the issues before the I.J. Such ruling violated the alien's statutory right to have a fair trial under the Fifth Amendment. (Excerpt Vol. I 115-7, 242-8, 202-19))

The alien was forced to testify in violation of his right as the accused under the Fifth Amendment. Under the Fed. R. Civ. Evid. Rule 104(b), Petitioner shall not become subject to cross-examination as to the other issues in the case. It is reasonably believed that such testimony is misconduct by the counsel. The Service has a burden of prove at the trial. The fact at the trial showed that the Government did not have correct, accurate information about the alien and the subject matter of the dispute. It simply created the record of the Form I-213 based on hearsay and fraud and misconduct

by the state officials. The Form I-213 was not sufficiently supported by material evidence of fact.

The counsel introduced an evidence of stalking allegation without full disclosure of the evidence. The assertion was unfairly stacking Petitioner's moral character and reputation. The counsel provided no evidence supported. The alien was not afforded opportunity to inspect, review and cross-examine such evidence. The full disclosure of the incidence is being requested. (Tr. at 32-5; Excerpt Vol. I 151-4) Where the counsel did not disclose evidence to the alien prior to the hearing, such evidence introduced at the hearing surprised Petitioner and was not admissible. *Cunanan v. INS* (9th Cir. 1988). Thus, the allegation of stalking inserted at the hearing was inadmissible. (*See* I.J. at 3). The INS counsel did not disclosed the record of Patriya Tansuhaj's allegation to the alien prior to the hearing date. The alien did not have opportunity to inspect, review and cross-examine such evidence. 8 C.F.R 240.2(a); *Cunanan v. INS*, 856 F.2d 1373, 1375 (9th Cir.1988); *Baliza v. INS*, 709 F.2.d 1231, 1234 (9th Cir.1983).

The counsel committed misconduct in the trial proceeding; it was injustice that the professional had exploited the proceeding. The Immigration Judge erred by including such evidence to unfairly attack Petitioner's moral character and mislead the proceeding, and allowing such assertion as part of the proceeding. The removal proceeding was ended without affording Sakkarapope's opportunity to cross-examine the Government's evidences. The alien's statutory right to have a fair trial under the Fifth Amendment was violated.

The alien also objected to the Government's pre-hearing statements and the I.J's finding of facts (Excerpt Vol. I 242-8; 115-7; 59-61) The Government did not ask for inspection of the original of any documents at hearing. Sakkarapope has statutory right to submit any material evidence against the Government's fraud. Where the Government failed to inspect the authenticity of the

documents filed at the hearing, the right and claim shall be waived.

Most testimony by the alien was simply duplicated from the existing documents. Petitioner was uselessly, unreasonably interrogated by the counsel at the hearing to take up time preventing the alien to cross-examine the government evidence and witnesses. Thus, the government's evidences were admitted in violation of the alien's right to cross-examine the evidences to which he objected. The proceeding was incomplete. A mistrial is to be considered by this Court.

The I.J. arbitrarily and prejudicially included only partial evidences and incidents to establish its findings of facts and then interpreted the laws. The decision was based on partial facts in the records. In addition to the alien's objections to the findings of facts, the I.J's statements of fact and conclusion of law are erroneous and extremely prejudiced, and the summary of evidence and testimony of Grimes contains misleading and false information, not supported by material evidences in the records. (*See* detail at Excerpt Vol. I 70-3, 115-7, 59-61; *see also,* Objection to Findings of Facts above).

The trial court order of March 5, 2004, was obtained through an unauthorized proceeding under the APA. Sakkarapope's Petition for Review was brought before the trial court pursuant to the Chapter 34.05 RCW ("APA"). RCW 34.05.510; RCW 34.05.590. Nothing in the statute allows Washington State University adopts a summary judgment pursuant to CR 56 in the APA. *ALPINE LAKES v. NATURAL RESOURCES*, Id.; *Eastlake Community Council v. City of Seattle*, Id. Here, the I.J. adopted and admitted the trial court order as an evidence anyway. Thus, the I.J.'s order is unconstitutional since it is based on the trial court's order obtained from an unauthorized proceeding.

An intentional injection of collateral matter of a prejudicial nature is reversible error. *Miller v. Staton,* 64 Wn.2d 837, 840, 394 P.2d 799 (1964). A new trial should be

granted where misconduct of counsel was so flagrant that no instruction would cure it. *Strandberg v. Northern Pac. Ry.*, 59 Wn.2d 259, 264, 367 P.2d 137 (1961); *State v. Suleski*, 67 Wn.2d 45, 406 P.2d 613 (1965); *VIOLA WARREN v. ARTHUR H. HART et al.*, 71 Wn.2d 512. Therefore, The BIA ignored the statements that are prejudicial and so inflammatory, and not relevant to the issues being litigated; it should not be maintained under its review.

The removal proceeding was arbitrary or illegal, and was not comported with the requirements of Due Process. The removal decision must be based on reasonable, substantial, and probative evidence in order to be valid. INA 240(c)(3)(a). The INS has the burden of establishing by clear convincing evidence that, in the case of an alien who has been admitted to the U.S., the alien is removable. INA 240(c)(3)(a); *Woodby v INS* (Sup.Ct.1966); *United States ex rel. Bishop v. Watkins* (2d Cir.1947). The government must meet and overcome positive evidence of the alien's legal right to be in the United States. If the government fails to meet its burden of proof, the immigration judge must decide for the alien. *Brader v. Zurbrick* (6th Cir.1930). Where the Government committed affirmative misconducts and failed to meet its burden of proof, therefore, the removal proceeding hearing was incomplete and a mistrial. The BIA should declare the removal proceeding a mistrial.

D. The Immigration Judge Erroneously Interpreted the Laws[*].

Petitioner respectfully submits that the alien might literally fail to maintain his nonimmigrant status by the government's affirmative misconduct, but he did not in fact legally fail to comply with the conditions of his nonimmigrant status which he met statutory requirement to properly maintain his status and reasonably fulfill his legal obligation at his best knowledge and ability. Such failure

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[*] *See also*, Excerpt Vol. I 75-83.

calls for a technical question. The I.J. erroneously interpreted Sakkarapope's student status: "All Sakkarapope needed to do to maintain his student was pursue a legitimate academic course load and make normal progress. He failed to do so. He is not now a student in any school in the United States. He has exhausted his administrative appeals." (I.J. at 8; Excerpt Vol. I 31)

The I.J. obviously misinterpreted what legally constitutes the terms: (i) "student." (ii) "to maintain a student status," (iii) "a legitimate academic course load," (iv) "normal progress toward completing educational objective," (v) "cause of failure," and (vi) "exhaustion of administrative appeal." The court erroneously interpreted the provision of 8 CFR 214(f), state laws and relevant regulations. The court did not review facts with respect to all relevant laws and University's policies and procedures, but adopted its own personal perception.

The "exhaustion of administrative appeal" is not in anyway equivalent to the exhaustion of internal agency appeals. The statute of RCW 34.05 governs the meaning of the exhaustion of the appeal. The ongoing-outstanding dispute pending judicial review of the agency decision in the state court does not justify whether alien failed to maintain his legal status. The Service itself recognized the outstanding litigation. (Excerpt Vol. II 536)

The term, "normal progress toward completing educational objective," should be based on Sakkarapope's academic evaluation made by his academic advisor and department. While his last annual academic review on April 23, 2002, was indicated a satisfactory progress—"normal progress, the Immigration Judge should not take the frivolous and defamatory statements made by Grimes for granted. (Excerpt Vol. II 300) Grimes has no academic expertise in Sakkarapope's academic area of study and has no authority to make any academic evaluation.

The I.J. erroneously interpreted the definition of a "student." The court adopted a definition of a "student" that

is not consistent with the provision of the INA, 8 CFR 214(f) and the University's policies and procedures. The court's definition is unconstitutional and prejudicial because it was based on the judge's personal perception and understanding. (Tr. at 116-7; Excerpt Vol. I 235-6)

Sakkarapope maintains the rights and expectations as prescribed in the Graduate Student Code. The Graduate School Policies and Procedures ("GSPP") define a regular student status as an applicant who is granted admission by a department/program. (Addendum 34-8, 16-8) Thus, the allegation #4 that "You did not carry a full course of study from Spring, 2003, semester to the present, beginning on or about January 10, 2003," was the consequence of premeditated, affirmative misconducts by Howard Grimes and co-conspired by the Service.

Sakkarapope already completed his coursework for both doctoral and master degree programs of study (IIDP and M.S. (Statistics)), but research work in fulfillment of his program requirement. The credit enrollment is not required after student's coursework was completed. 8 C.F.R. 214(f)(6). The University promised to properly maintain his immigration status during the appeal process. (Excerpt Vol. II 533-5) The enrollment for completion of his master degree program is under supervision of his academic advisor, Dr. Hao Zhang.

While Sakkarapope's judicial review of Washington State University's administrative decisions pursuant the Administrative Procedure Act, RCW 34.05 and 41.06 actively pending review by the state courts, the related litigation pending review in the federal courts, and the right to appeal is not yet expired, the not-carry-a-full-course-of-study cannot be decided by the Immigration Judge since the Immigration Judge does not have jurisdiction over the dispute governed by the APA, RCW 34.05. It is a state court matter.

The conclusion that "I find removability has been established by clear and convincing evidence," (I.J. at 8;

Excerpt Vol. I 110), was not supported by material facts of evidence. The conclusion was based on false, misleading and prejudicial testimonies and Government's evidences. The Immigration Judge does not jurisdiction and expertise to decide the legality of Sakkarapope's student status.

Petitioner respectfully submits that Sakkarapope is not removable due to the constitutional due process right protection. The determination of Sakkarapope's nonimmigration status under F-1 Visa and order him to leave the United States by June 22, 2004, violates his due process rights and equal protection guaranteed by the Fourteenth Amendment and the State Constitution. All aliens legally admitted in the U.S. are guaranteed the rights secured by the Bill of Rights. As a nonimmigrant admitted under F-1 visa, Sakkarapope has a full right to education at the designated school where he was admitted and paid tuition and fees. Petitioner has a property interest at Washington State University. Any alien may bring suit in federal court if the alien can claim federal question jurisdiction or federal statutory rights have been violated. A torture suit is permitted. *Filartiga v. Pena-Iraala* (2d Cir.1980); *Forti v. Duarez-Mason* (N.D. Cal. 1987)(Forti I); *Forti v. Duarez-Mason* (N.D. Cal. 1987)(Forti II). Alien may sue or be sued in federal court based on diversity of citizenship. *Breedlove v. Nicoler* (Sup.Ct.1833)

A right to file a petition for review of the University's decisions pursuant to RCW 34.05, is granted and guaranteed by the State constitution, Article I Section 3 and 4. Sakkarapope is a party to the judicial review proceeding and has standing. RCW 34.05.010; RCW 34.05.530. These rights are guaranteed by the United States Constitution. The removal would result in loss of both property and life; or all that makes life worth living. *Ng Fung Ho v. White* (Sup. Ct. 1992).

Prior to the fall 2003 semester, Sakkarapope had not yet requested for a new SEVIS I-20ID, where the deadline was in August, 2003. While Sakkarapope did not hold a

SEVIS I-20, the action of entering the SEVIS and terminated Sakkarapope on the same day constituted abuse of the federal property/system. The official cannot create an SEVIS ID without actually issuing a SEVIS I-20 to Sakkarapope. Such action constituted retaliation attempt from the ongoing dispute.

The dismissal of January 31, 2003 was not on academic ground, but rather a claimed violation of the University's regulation. Grimes had premeditatedly abused of discretion and committed official misconduct. The subject matter is readily for a due process hearing. *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973). No review or hearing was afforded. Grimes violated Sakkarapope's due process right guaranteed by the Fourteenth Amendment. Grimes and Furnari violated Sakkarapope's immigration status and failed to maintain the rights and expectations, as prescribed in the Graduate Student Code. (Addendum 34-8) The GSPP defines a student status on leave that:

> Students who, for any reason, find that they cannot enroll for credits are considered to be on Graduate Leave Status....Students on Graduate Leave Status will be considered by the Graduate School to be in good standing for up to four consecutive years...(Addendum 17)

The University has legal and moral obligations to maintain the rights and fulfill the expectations as prescribed in the Graduate Student Code and as promised in the Dean DePauw's letters of May 4 and August 10, 2000. The courts recognized the existence of an implied contractual right between the student and the university with the term prescribed by the university the student to comply, for both academic and disciplinary disputes. Guidance by a counselor constitutes a contract between the student and the college as prescribed him by authorized representatives of the college. *Carr v. St. John's University, New York*, 187 N.E.3d 18(N.Y. 1962); *Healy v. Larsson*, 323 N.Y.S.2d 625, affirmed, 318

N.E.2d 608(N.Y. 1974); *Eden v. Board of Trustees of State University,* 374 N.Y.S.2d 686(N.Y. App. Div. 1975).

The courts' opinions substantially recognized the student-institution contracts and the substantial deviations could constitute a breach of contract. *Paynter v. New York University*, 319 N.Y.S.2d 893 (N.Y. App. Div. 1971); *Zumbrun v. Univ. of Southern California*, 101 Cal. Rptr. 499(Cal. Ct. App. 1972)

While Sakkarapope followed the advice and instruction of the University officials, it cannot be said he failed to comply with the rules and regulations. An application of unpublished distinction between the words is an abused of discretion. *State ex rel. Bartlett v. Pantzer,* 489 P.2d 375 (Mont. 1971). An under-enrollment after a student has completed his coursework in fulfillment of program requirement is permissible and under supervision of his advisors. 8 CFR 214.

Therefore, the decisions of the I.J. and the BIA violated Sakkarapope's constitutional rights. Thus, the decisions are invalid.

E. Voluntary Departure Relief Was Granted in Violation of Section 240B(a)

Voluntary departure may not be granted prior to the completion of removal proceedings without an express waiver of the right to appeal by the alien or the alien's representative. *Ocampo-Ugalde*, 22 I&N Dec. 1301 (BIA 2000). The facts show that Sakkarapope did not make a request for a voluntarily departure relief, but proposed by the counsel. Sakkarapope did not concede to removability and waive his appeal right of all issues. Sakkarapope has full intention to challenge all issues on appeal. He made clear that he requested the court granting adjustment of his status to a permanent status, and did not withdraw his request. (Tr. at 114-5, 119-20; Excerpt Vol. I 233-9)

Sakkarapope did not concede that he failed to maintain or comply with the conditions of nonimmigrant

status under which he was admitted. The alien is not responsible for any violation that is beyond his control and caused from affirmative misconducts by the state and federal officials. The removal proceeding was initiated based on false, premeditated information and in violation of the alien's due process right guaranteed by the Fourteenth Amendment. Where the Government is barred to remove the alien, and he is admissible to that of a permanent resident, therefore, Sakkarapope's nonimmigrant status should be adjusted to a permanent status accordingly.

Therefore, the voluntary departure relief was granted without a request of Sakkarapope and in violation 8 C.F.R. 240.26; INA 240B. Such order was unconstitutional. The BIA should invalidate such arbitrary relief. In stead, the BIA found no error in the I.J.'s granting of voluntary departure and construed the I.J.'s error as a withdrawal, with prejudice, of any request for voluntary departure. Such action is arbitrary and prejudicial to the alien, violates the alien's due process right and deprives his right to such relief in other proceeding.

F. The Immigration Judge and the BIA Do Not Have Jurisdiction to Determine Sakkarapope's Student Status at WSU; Deprivation of Rights and Liberty Interests

Pursuant to RCW 34.05, a Petition for Review of Washington State University's decisions and actions of the dismissal/disenrollment was filed with the Whitman County Superior Court, Washington, and has been pending for review by the Court of Appeals, Division III, of the State of Washington. A Complaint of violations of constitutional rights under FERPA under Section 1983 was filed with the U.S. District Court, Eastern District of Washington on February 24, 2004, and has been pending for review by the Ninth Circuit Court of Appeals.

Washington State University ("WSU") is a state agency and its final decisions and actions are subject to the state Administrative Procedure Act, RCW 34.05. Thus,

Petitioner respectfully submits that the Service, the I.J. and the BIA have do not have jurisdiction to determine Sakkarapope's student status at WSU, but the final outcome of the state court's judicial review. Where the Immigration Judge determined Sakkarapope's student status, the court acted outside of its jurisdiction. The removal proceeding should have been cancelled as requested. Such order of April 23, 2004, was unconstitutional and violated Sakkarapope's due process right guaranteed by the constitutions.

Pursuant to WAC 261-12-600, a remedial action was requested as the result of the disenrollment of January 31, 2003, leading to the termination of his on campus employment. A Petition for review of the Personnel Appeals Board has been pending for review in the Superior Court of Thurston County, the Sate of Washington. A successful outcome will result in a permanent employment position effective January 12, 1996. Such remedial action will substantially determine Sakkarapope 's immigrant visa on employment basis, retroactively. Sakkarapope has a liberty interest in this regard.

Sakkarapope's admission to a graduate program at WSU and financial assistance were arranged by the University. This special arrangement constitutes an educational contract between the student and the University. (Excerpt Vol. II 408-15) The University breached the contract and failed to fulfill Sakkarapope's rights and expectations as prescribed in the Graduate Student Code. (Addendum 36-38) Sakkarapope paid tuitions and fees for educational services and he has right to receive the services as described in University's publications.

With the inclusion of the arguments stated herein above, a removal of Sakkarapope will deprive his property interests: (i) the remedial action—a permanent employment, (ii) right to continue his program of study, right to education at WSU as to he paid tuitions and fees, (iii) educational contract, and (iv) right as provided by the Graduate Student Code. The removal order, volunteer departure or a

withdrawal of volunteer departure with prejudice would deprive his rights and liberty interests without due process of law; it does not withstand in the Fourteenth Amendment.

G. Prosecutorial Discretion*

The fundamental issue of this instant case is whether the state and the BCIS officials had committed affirmative misconducts that substantially caused the removability of the alien, then, the Government is barred from removing the alien as a result of the government's affirmative misconduct. *INS v. Maranda* (Sup.Ct. 1982); *McLeod v. Peterson* (3d Cir.1960); *Corniel-Rodriguez v. INS* (3d Cir.1976). An experienced lawyer should be able to make a distinction from the issue whether the Government should be estopped from bring removal proceedings against the alien because of a selective prosecution. Obviously, both issues are not the same.

The Government has a discretion to initiate a removal proceeding which is not subject to review by the BIA or a federal court; this is not an issue before the I.J. and the BIA. However, once the Government initiated a removal proceeding, the IJ must adjudicate it in a full, fair and impartial fashion. In the presence of the government affirmative misconducts substantially caused the removability of the alien, then, the Government is barred from removing the alien. Indeed, the I.J. did not determine whether the government affirmative misconducts substantially caused the removability of the alien. The fact shows that the misconduct of Howard Grimes substantially caused Sakkarapope's removability.

The government's argument not only misled the fundamental issue in the instant case, but also came far short to make a distinction between "discretionary" and "non-discretionary." (Excerpt Vol. I 28) The Immigration and Nationality Act does not define what constitutes a

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* *See also*, Excerpt Vol. I 13-6.

discretionary decision. *Hernandez v. Ashcroft*, 345 F.3d 824, 833 (9th Cir. 2003). The Ninth Circuit held that "determinations that require application of law to factual determinations are nondiscretionary." *Id.* at 833–34 (internal quotation marks and alteration omitted). On the other hand, "an inquiry is discretionary where it is a subjective question that depends on the value judgment of the person or entity examining the issue." *Romero-Torres v. Ashcroft*, 327 F.3d 887, 891 (9th Cir. 2003) (holding that the court lacks jurisdiction to review the BIA's exceptional and extremely unusual hardship determination).

"When the BIA acts where it has no legal authority to do so, it does not make a discretionary decision, and such a determination is not protected from judicial review." *Hernandez*, 345 F.3d at 847 (holding that because BIA's decision to deny adjustment based on non-viability of the marriage was contrary to law, it was not discretionary, and therefore subject to review); *Spencer Enterprises, Inc. v. United States*, 345 F.3d 683, 689 (9th Cir. 2003) ("Even if a statute gives the Attorney General discretion, . . . the courts retain jurisdiction to review whether a particular decision is ultra vires the statute in question.").

Indeed, the validity of Howard Grimes' decisions and actions of January 31, 2003, is a question of law which is outside of jurisdiction of the I.J. and BIA. A purely legal question is non-discretionary. *Montero-Martinez v. Ashcroft*, 277 F.3d 1137, 1144 (9th Cir. 2002) (holding that section 1252(a)(2)(B)(i) "eliminates jurisdiction only over decisions by the BIA that involve the exercise of discretion").

In *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 491-492(1999), the U.S. Supreme Court referred to "an unlawful alien" in this country. In this instant case, Sakkarapope is a lawful alien, but the government officials have attempted to make him unlawful while he is still in a due process of law under the state APA. Whether Sakkarapope is a lawful alien is a question of law, which is non-discretionary.

Nonetheless, the Ninth Circuit held that § 1252(g) did not "bar review of the actions that occurred prior to any decision to 'commence proceedings,' if any, against her or to execute the removal order, such as the INS officials' allegedly discriminatory decisions regarding advance parole, adjustment of status, and revocation of parole". *Wong v. United States*, 373 F.3d 952, 965 (9th Cir. 2004); *See also*, *Walters v. Reno*, 145 F.3d 1032, 1052 (9th Cir. 1998) (holding that § 1252(g) did not prohibit district court from enjoining deportation of aliens who raised general collateral challenges to unconstitutional agency practices). Therefore, the issue of affirmative misconducts of the officials prior to the exercise of prosecutorial discretion is not barred by Section 1252(g). The affirmative misconducts are factual of evidences that the IJ and BIA must take into account in determining the alien's removability. The IJ was biased and failed in this regard.

The fact that the Government did not make any argument whether the Government's officials did not committed affirmative misconducts. In the absence of an explicit adverse credibility finding, the Ninth Circuit must assume that [the applicant's] factual contentions are true. *Kataria v. INS*, 232 F.3d 1107, 1114 (9th Cir. 2000). Thus, the BIA and this court should take the alien's contention of affirmative misconducts by the Government's officials as true.

The Government's assertion that "estoppel may not be used to prevent the Government from carrying out its functions," (Excerpt Vol. I 28), plainly does not support its position because, in the instant case, nothing prevents the Government to carry out its function, but it simply does not have authority to do so where Sakkarapope is still lawful in this country. The Government has authority and function to deal with unlawful aliens. Where the government affirmative misconducts substantially caused the removability of the alien, it plainly and simply means that, in fact, the alien is not legally removable, but the records showing the removablity

were wrongly made by the officials. In this case, the Government does not carry out its functions because the alien is lawful; then, the Government is barred from removing the alien. Indeed, where an alien is lawful he still has constitutional right to assert selective enforcement as a defense.

Respondent respectively submits that the statements, "The Government has a statutory responsibility to enforce federal immigration laws. In has acted in accordance with its responsibility and without any other motivation in this case. Any arguments to the contrary are without support and without merit," (Excerpt Vol. I 28), are not supported by the facts in the records. The Government in this case did not act within its statutory responsibility because it doe not have authority to make any determination of the validity of Grimes' decisions and actions. According to the fax cover message dated 9/18/2003 by Wolder, "We need your advice on how to responds to the petition attached. The petitioner is no longer attending school. ICE is ready to issue NTA. Should we issue NTA while this issue between the petitioner and school is outstanding?" (Excerpt Vol. II 536). Hence, the Government was aware of legality of the outstanding litigations in the first place prior to the exercise of its discretion. Nonetheless, the Government did not assert under what authority it uses to determine the validity of Grimes' decision and action at the time of exercising of its discretion.

The Government's evidence--the letter of July 21, 2003 was created under supervision of Hanson to initiate a removal proceeding. Hanson took action according to the Furnari's email 6/9/2003. Indeed, the records of email communication (June 9, 2003) between the University's officials and Hanson, BCIS, suggest co-conspiracy. (Excerpt Vol. II 374, 376, 449-50, 492)

H. The BIA Violated Its Streamlining Policy

Pursuant to the BIA's streamlining policy entered January 14, 2002, a single member of the Board to take

action where a pending appeal falls within 8 C.F.R §3.1(d)(1) or (a)(1). Petitioner respectfully submits that the issues presented for review in the instant case do not fall within either 8 C.F.R §3.1(d)(1) or 8 C.F.R §3.1 (a)(1). The issues before the Board are directly involved with the interpretation of the statues and relevant laws and rules within and outside of the BIA's jurisdiction. The case should have been reviewed by a panel of the Board or En Banc. Therefore, the BIA abuses its discretion. The BIA's order of September 12, 2005, was outside of an authority of a single member of the Board to take action. Thus, the order of September 12, 2005, is arbitrary and unconstitutional.

VI. CONCLUSION

Petitioner respectfully submits that the Service, I.J. and the BIA do not have jurisdiction to determine whether Sakkarapope's student status at WSU. The disputes between WSU and Sakkarapope are governed by the state statute, RCW 34.05. Sakkarapope met statutory requirement to properly maintain his status and reasonably fulfill his legal obligation at his best knowledge and ability. Petitioner respectfully submits that the I.J. erroneously interpreted the laws in determining the removability of Sakkarapope. The Notice of Appear and the Form I-213 were invalid. The government is barred from removing the alien as a result of the government's affirmative misconduct and promise to maintain Sakkarapope's appropriate immigration status.

The Removal proceeding was arbitrary or illegal, and was not comported with the requirements of Due Process. The voluntarily departure relief was granted without a request of Sakkarapope and in violation 8 C.F.R. 240.26; INA 240B.

The BIA violated its streamlining policy because the instant case does not fall within either 8 C.F.R §3.1(d)(1) or 8 C.F.R §3.1 (a)(1).

Because Sakkarapope is not removable, Petitioner respectfully submits that his nonimmigrant status should be

adjusted to a permanent resident based on the affirmative misconducts by the government officials and his eligibility to that of that of permanent resident as well as liberty interest. (*See* details at Excerpt 85-90)

Based on the facts and circumstances presented above, Petitioner respectfully asks the Court for judgment on the following:

(a) Declare the removal proceeding of April 22, 2004, is a mistrial, and invalidate and reverse the I.J.'s decision of April 23, 2004, and the BIA's decision of September 12, 2005, and declare the orders are unconstitutional;

(b) Grant Adjustment of Status to a permanent resident. Sakkarapope has been present in the United States long enough and comfortable to successfully settle his family life and career in the United States. He truly believes he will be a good permanent resident of the country as well as a citizen; and

(c) Award reasonable cost as authorized by law, equal justice, covering expenses and fees incurring from the litigations.

RESPECTFULLY SUBMITTED this 23rd day of January, 2006.

s/ B. Sakkarapope

Benjapon Sakkarapope, Appearing Pro Se Petitioner